



CRP Nos.2196 & 2199 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 02.07.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

CRP. Nos.2196 & 2199 of 2025

Rameshkumar ... Petitioner in both CRPs

Vs.

Malliga ... Respondent in both CRPs

Commn Prayer : Both the Civil Revision petitions have been filed under Article 227 of the Constitution of India to set aside the order dated 14.03.2025 made in I.A.No.992 of 2024 & I.A.No.993 of 2024 in O.S.No.135 of 2018 on the file of Subordinate Judge, Thittakudi, Cuddalore District and allow the Civil Revision Petition.

For Petitioner : Mr. S.Senthilanathan
both the CRPs

For respondent : Mr. R.Surya Prakash
both the CRPs



CRP Nos.2196 & 2199 of 2025

COMMON ORDER

WEB COPY Challenging the dismissal orders passed in the application filed under Section 5 of limitation to condone the delay of 70 days to set aside the exparte decree dated 20.03.2023, as well as the application filed under Order IX Rule 13 of CPC to set aside the exparte decree, the revision petitions have been filed.

2. The respondent/plaintiff has filed a suit in O.S.No.135 of 2018 on the file of the Sub Court, Thittakudi against the revision petitioner/defendant for recovery of a sum of Rs.5,43,733/- based on the promissory note executed by the revision petitioner. Since the respondent/plaintiff was not cross examined by the revision petitioner, he was set exparte on 21.02.2023 and thereafter exparte decree was also passed on 20.03.2023.

3. The revision petitioner has filed applications to set aside the exparte decree along with condone delay application before the Trial Court contending that he was unable to attend Court due to jaundice and taking



country medicine. Therefore, he could not cross examine the respondent/plaintiff.

4. The respondent countered by stating that exparte decree was already passed in E.P.No.32 of 2020 on 28.06.2019, and that the petitioner had filed similar applications, which were allowed subject to payment of costs. Thereafter, the present exparte decree dated 20.03.2023 was passed after several opportunities being given.

5. The Trial Court, after considering the facts and circumstances, dismissed both the applications on 14.03.2025 Against which, the revision petitions have been filed.

6. The learned counsel for the revision petitioner would submit that delay is 70 days alone and the petitioner should be given an opportunity to contest the suit on merits as a last chance.



7. Heard both sides and perused the materials available on records carefully.

8. While considering the application filed under Section 5 of the Limitation Act, the length of delay is not a matter, but also the conduct and attitude of the parties to be taken note of. When sufficient cause is shown, particularly, when a party has been genuinely prevented from appearing before the Court, the Court will be lenient in favour of the party. However, when the parties act deliberately to delay the proceedings and defeat the rights of the decree holder and allow the matters to proceed ex parte, the Court will not normally extend any benefits to such parties.

9. While assessing the application to condone the delay, the conduct of the parties cannot be ignored altogether. In this case, the suit has been originally filed for recovery of a sum of Rs.4 lakhs based on the promissory note said to have been executed and an ex parte decree was passed on 28.06.2019. Thereafter, an Execution Petition in E.P.No.32 of 2020 has also been filed. When E.P. was midway, the petitioner filed an



CRP Nos.2196 & 2199 of 2025

application to set aside the exparte decree, which has been allowed and thereafter when the matter posted for trial, exparte decree was passed on 20.03.2023 once again. It is relevant to note that when the matter was posted for cross examination of the respondent/plaintiff, continuously, on various dates, viz., 23.01.2023 , 02.02.2023, 09.02.2023, 14.02.2023, 17.02.2023, 20.02.2023, 21.02.2023, the counsel for the revision petitioner has not chosen to cross examine the witness. From the very conduct of the party, and casually taking adjournments for several hearings, without cross examining the witness, indicates that the non appearance is deliberate and only in order to delay the proceedings.

10. Taking note of the conduct of the petitioner, this court is about the dismiss the applications. At that stage, the learned counsel for the petitioner would submit that he may be given an opportunity to deposit some amount to contest the matter.



CRP Nos.2196 & 2199 of 2025

11. Accordingly, the revision petitioner is directed to deposit a sum of Rs.2,00,000/-(Rupees two Lakhs only) to the credit of O.S.No.135 of 2018 on the file of the Subordinate Court, Thittakudi, on or before 04.08.2025. If the amount is not deposited by the said date, the order of the Trial Court stands confirmed. In the event the amount is deposited, as ordered by this Court, the exparte decree stands set aside, and the Trial Court shall dispose of the suit in O.S.No.135 of 2018 within a period of 3 months thereafter.

12. With the above directions, both the civil revision petitions are disposed of. No costs.

02.07.2025

mrp

Note : Issue order copy on 07.07.2025

To

Subordinate Court, Thittakudi,
Cuddalore District.

6/7



WEB COPY



CRP Nos.2196 & 2199 of 2025

N. SATHISH KUMAR, J.

mrp

CRP Nos.2196 & 2199 of 2025

02.07.2025