



A. No. 3395 of 2025
and C.S. No. 412 of 2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2025

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THE HONOURABLE Dr. JUSTICE R.N.MANJULA

A. No. 3395 of 2025
and C.S. No. 412 of 2015

S.Bharathiraja

...Applicant

Vs.

R.Subramanian (deceased)

- 1.Kalavathy Subramanian
- 2.Vindhya Subramanian
- 3.R.Anandhi
- 4.M.K.Raja
- 5.S.Senthil
- 6.S.Shanmugam
- 7.P.Varalakshmi
- 8.S.Raviendran
- 9.C.Chinnazhaku
- 10.Uthamaprabhu
- 11.Mayuri

12.LIC Housing Finance Limited
No.30/1A, Abdul Razack
1st Street, Saidapet, Chennai-600015.



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13. Easy Access Financial Services Limited
'ACCESS HOUSE', 24, Judge Jambulingam Road
Mylapore, Chennai-600004.

[Defendants 7 to 12 are impleaded as per
order dated 21.12.2021 made in
A.No.3718 of 2021 and time extended as
per order dated 21.01.2022.]

... Respondents

Prayer : This application has been filed under Order XIV Rule 8 of the
Original Side Rules read with Section 5 of the Limitation Act, to
condone the delay of 263 days in filing to set aside the exparte decree
dated 16.08.2024 made in C.S. No. 412 of 2015.

For applicant : Mr.R.Thiagarajan

For Respondents : Mr.K.Harishankar (RR1 & 2)

The application has been filed to condone the delay of 263 days in
filing to set aside the exparte decree dated 16.08.2024 made in C.S. No.
412 of 2015.

2. The applicant is the 10th defendant.

3. The suit has been filed by the respondents 1 and 2 /plaintiffs for
seeking the relief of declaration and for permanent injunction.

4. As the Defendant No.10 was set exparte, he has filed this



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application seeking to condone the delay of 263 days in filing to set aside the exparte decree dated 16.08.2024 made in C.S. No. 412 of 2015.

5. The learned counsel for the applicant submitted that after receiving the summons, he entrusted the matter to the then counsel, whom he engaged and briefed him about his side of the matter, but the counsel kept the applicant at dark and he came to know later that he was not defended the suit and a decree had been passed.

6. The plaintiffs came to know about the decree dated 16.08.2024 only on 26.05.2025 and due to intervening summer holidays, he could not ascertain the correct position and hence, he is not able to file this application within a period of 30 days of limitation.

7. Rest of the arguments made by the learned counsel for the applicant and averments made in the application relate to the merits of the suit.

8. The learned counsel for the respondents /defendants submitted that the applicant, who has got the knowledge about the pendency of the suit as early as in the year 2018, after he received the summons, cannot now claim that he had knowledge about the disposal of the suit only in



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9. He further submitted that the decree is a contested decree and it cannot be considered as an *ex parte* decree. He further submitted that the applicant had mortgaged his property and the mortgagee had been impleaded as 12th defendant in the suit.

10. He further submitted that during the pendency of the suit, the applicant himself had on 14.07.2023 sold the property to a third party, by name Abdul Gani, and the said fact had also been stated in his affidavit.

11. At the outset, it is to be noted that the judgment passed in the suit is not *per se* an *ex parte* judgment and the judgment had been passed after hearing the contested parties, who appeared and severely contested the matters.

12. Insofar as this applicant is concerned, he has also admitted the fact that he had received the summons in the suit and he had also engaged an Advocate and given him instructions. In such view of the matter, it is for the defendants to follow up the proceedings by



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frequently contacting his counsel in order to know the stage of the proceedings. However, the applicant remained quite and after the decree has been passed, he has come to the Court and stated that he had knowledge about the decree only on 26.05.2025.

13. In fact, the applicant had also stated in the affidavit that he had sold the property itself to a third party, by name Abdul Gani, by virtue of a registered Sale-deed dated 14.07.2023. The applicant having sold away his right in the property claims now to set aside the decree in order to protect the interest of his purchaser. The majority of the contentions that have been raised in the application is about the applicant's right or the weakness of the case of the plaintiff.

14. Since the judgment itself is passed on merits and not ex parte decree, it would have been appropriate on the part of the applicant /10th defendant to file an appeal after seeking leave of the Court. The reasons stated by the applicant is that the counsel has not properly updated him is not acceptable because he cannot keep quite after having engaged the counsel in the year 2018.



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that the applicant did not contact his counsel for a period of 10 years.

The failure on the part of the applicant to contest the matter effectively by properly interacting with his counsel cannot cause hardship to the parties, who have been actively participated in the proceedings and got a decree ultimately. Setting aside the decree, which has been passed on merit, not only affects the interest of the plaintiff but also other defendants, who have been actively participated the suit proceedings.

16. As I do not find any merits in the application now filed by the applicant /10th defendant to condone the delay, I prefer to dismiss the same.

17. Accordingly, this application stands dismissed. No costs.

11.09.2025

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Dr.R.N.MANJULA, J.

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