



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 11.11.2025

Order pronounced on : 28.11.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.3341 of 2025

& CMP.No.18397 of 2025

1.B.R.Manoharan
2.B.M.Thilipkumar
3.B.M.Dineshkumar

... Petitioners

Vs.

K.S.Jayanthakumar

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order made in I.A.No.55 of 2021 in O.S.No.102 of 2014 dated 15.07.2025 on the file of the Subordinate Judge, Palacode.

For Petitioners : Mrs.P.Srividhya

For Respondent : Mr.Arun Anbumani

ORDER

The defendants, whose application for condonation of delay of 1241 days in filing the petition to set aside the ex-parte decree came to be dismissed, are the revision petitioners.



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2.I have heard Mrs.P.Srividhya, learned counsel for the petitioners and Mr.Arun Anbumani, learned counsel for the respondent.

3.Mrs.P.Srividhya, learned counsel appearing for the petitioners would submit that the suit was filed by the respondent, claiming damages for the alleged demolition carried out by the petitioners, resulting in irreparable loss to the plaintiff. The suit was contested and in the course of trial, the petitioners were set ex-parte and the suit came to be decreed. She would invite my attention to the affidavit filed in support of the application and contend that the petitioners have categorically asserted that the 1st petitioner met with an accident and suffered bone fracture and was taking treatment for one month. Thereafter, he was constrained to continue treatment for three more months, due to a hip replacement surgery. He has been admitted to Ganga Hospital at Coimbatore and thereafter Apollo Hospital at Chennai and only on account of the accident and treatment, he could not meet his counsel to instruct the counsel to file written statement. She would further state that the non-appearance of the defendants 2 and 3 is also explained in the affidavit, as they had to take care of the 1st petitioner.



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She would also submit that since the decree involves substantial sums of money and it is the categorical case of the petitioners that they have not effected any demolition, an opportunity may be given to the petitioners to contest the suit. She would therefore pray for the revision being allowed.

4.Per contra, Mr.Arun Anbumani, learned counsel appearing for the respondent would submit that the delay of 1241 days is unexplained and further even the details of the accident have not been set out or established. It is contended that the 1st petitioner is a business man, politician and also operator of a Matriculation School and has always been in good health and contrary to his affidavit, he was attending a criminal case in SC.No.48 of 2017 and R.E.P.No.107 of 2017. Therefore, the 1st petitioner has sworn to a false affidavit and has not been able to substantiate the delay. He would further state that the trial Court has dismissed the application by a well reasoned order and the same does not require any interference. He would therefore pray for dismissal of the revision. In support of his contentions, the learned counsel for the respondent would rely on the following decisions:



*1.P.Sureshkumar Vs. M.Dhandapani and others in
WEB COPY CRP.No.3801 of 2025 dated 07.11.2025.*

*2.Siva Natarajan Alayam Vs. G.Natarajan and another
in CRP.No.557 of 2018 dated 28.08.2020.*

5.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records, including the impugned order which is under challenge in the revision petition.

6.The suit was filed claiming compensation by way of damages for the alleged demolition carried out by the revision petitioners in pulling down the shop that was purchased by the plaintiff from the revision petitioners. Despite service of summons, the petitioners did not chose to appear to even file a written statement.

7.In fact, in the course of enquiry, the 3rd petitioner has examined himself as P.W.1 and exhibited the original discharge summary issued by the Ganga Hospital, Coimbatore. On the side of the respondent, he



examined himself as R.W.1 and marked Ex.R1 to Ex.R4, to substantiate his counter that the 1st petitioner contrary to the averments in the affidavit, was attending to other proceedings.

8. During the course of cross-examination of P.W.1, the 3rd petitioner, P.W.1 has admitted that he and his brother have regularly been appearing in SC.No.48 of 2017 and his father use to appear on and off. This admission of P.W.1 is fatal to the case set up for condonation of delay on the ground that the 1st petitioner had met with an accident and was taking treatment continuously, which prevented him from appearing in the Court. P.W.1 further admitted that his father is the Chairman of Karimangalam Town Panchayat and he has filed various cases before the Courts. This again goes against the case projected in the affidavit that the other petitioners were also incapacitated to appear. P.W.1 has also admitted that subsequent to the ex-parte decree in R.E.P.No.101 of 2017, notice was served and P.W.1 has appeared in the execution petition as well.



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9.The 1st petitioner was examined as P.W.2 and in cross-examination, he states that he has been in good health and that he appeared in S.C.No.48 of 2017 for most of the hearings. All these admissions of P.W.1 and P.W.2 have been rightly taken into consideration by the trial Court in holding that the petitioners were certainly not incapable of instructing their counsel to file the application to set aside the ex-parte decree passed by a Court, which is situate very near to the criminal Court where the petitioners have been regularly attending. It is also seen that despite having notice about the ex-parte decree on being served in R.E.P.No.107 of 2017 as well, the petitioners have not been diligent to move the application to set aside the ex-parte decree.

10.The trial Court has also discussed the discharge summary filed by the petitioners and found that the accident took place 10 years back and there is absolutely no material to suggest that after the ex-parte decree, the treatment continued and prevented the petitioners from moving the Court with appropriate applications. The trial Court has passed a well considered order and found that no sufficient cause has been made out by the revision petitioners. Sitting in revision, I do not find that the said order is perverse or



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illegal, warranting interference.

11.In fine, the Civil Revision Petition is dismissed. No costs.

Connected Civil Miscellaneous Petition is closed.

28 .11.2025

Neutral Citation: Yes/No

Speaking Order/Non-speaking Order

Index : Yes / No

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To

The Subordinate Judge, Palacode.



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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.3341 of 2025
& CMP.No.18397 of 2025

28.11.2025