



CMP.No.19417 of 2025

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THE HIGH Court OF JUDICATURE AT MADRAS

Order reserved on : 11.08.2025

Order pronounced on : 22.08.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CMP.No.19417 of 2025
in C.R.P.No.1418 of 2024

M/s.Ramaniyam Real Estates (P) Ltd.,
Rep. by its Managing Director
Mr.V.Jaggannathan,
No.17/35, 2nd Main Road,
Gandhi Nagar, Adyar,
Chennai – 600 020.

..Petitioner

Vs.

1.Arun Malhotra
2.Shikha Malhotra
3.Harsh Malhotra

4.M/s.Satya Surendra Developers,
A Partnership Firm,
Rep. by its Managing Partner
Mr.Harsha Malhotra,
No.240, Zone -1, M.P.Nagar,
Bhopal – 462 011,
Madhya Pradesh.

5.The District Registrar,
O/o District Registrar of Registration,
Saidapet, Chennai – 600 015.

6.The Joint Sub-Registrar I,
Saidapet, Chennai – 600 015.

..Respondents



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the ex-parte order dated 17.06.2025 passed by this Court in CRP.No.1418 of 2024 and rehear the matter on merits by giving opportunity to the petitioner herein.

For Petitioner : Mr.ARL.Sundaresan
Senior Counsel
for Mrs.S.Vaitheeswari

For Respondents : Mr.N.Vijayanarayan
Senior Counsel
for Mr.Prahalad K.Bhat for RR1 to 4

Mr.N.Muthuvel
Government Advocate for RR5 & 6

ORDER

The above Civil Miscellaneous Petition has been filed seeking to set aside the ex-parte order dated 17.06.2025 in CRP.No.1418 of 2024 and to rehear the matter on merits, by giving an opportunity to the petitioner.

2.I have heard Mr. ARL.Sundaresan, learned Senior Counsel for Mrs.S.Vaitheeswari, learned Counsel for the petitioner and Mr.N.Vijay Narayan, learned Senior Counsel for Mr.Prahalad K.Bhat, learned Counsel for respondents 1 to 4 and Mr.N.Muthuvel, learned Government Advocate for respondents 5 and 6.

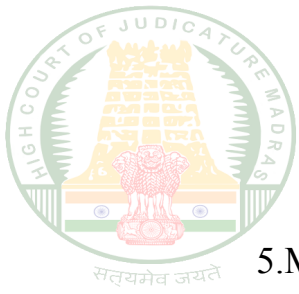


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3.The learned Senior Counsel, Mr. ARL.Sundaresan, would state that the petitioner was not served in the revision through Court. He would invite my attention to the notice sent by Speed Post with acknowledgment card due and delivery report issued by the Postal Department and contend that the revision petitioner has not produced the acknowledgment card for having sent notice in the CRP, through Speed Post. He would therefore state that without filing the acknowledgment card, mere reliance on the tracking sheet and delivery report issued by the Postal Department is of no avail. Referring to the Court status in the e-Courts site, the learned Senior Counsel would state that, admittedly the petitioner has not been served with notice through Court.

4.The Senior Counsel would take me through the orders passed by this Court initially on 28.03.2024, when this Court while granting an interim stay of proceedings in OS.No.3300 of 2023 had ordered notice to the respondents returnable by 15.04.2024. The learned Senior Counsel's contention is that the notice to the respondents as ordered by the Court on 28.03.2024 has not been complied with and merely because private notice was also permitted, the same would not amount to dispensing with the notice through Court process.



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5.Mr.ARL.Sundaresan would take me through the various orders and would contend that the petitioner has not been put on notice in the revision and therefore, it would be just and proper to recall the ex-parte order and hear the petitioner and dispose of the revision thereafter, on merits. The learned Senior Counsel would further rely on Order VII of the Appellate Side Rules with regard to the requirement of service of notice on the petitioner. As regards the order dated 12.03.2025, directing the counsel for the petitioner to inform the counsel who normally appears for the petitioner, Mr.ARL.Sundaresan would state that even the said order has not been complied with and therefore, serious prejudice has been caused to the petitioner. He would therefore pray for the CMP being allowed and the ex-parte order dated 17.06.2025 being recalled, so that the revision could be heard, after giving an opportunity to both parties and decide thereafter.

6.Per contra, Mr.Vijay Narayan, learned Senior Counsel appearing for the respondents 1 to 4 would first and foremost contend that the application has been taken out under Order IX Rule 13 of CPC and specifically taking me through the affidavit filed in support of the application for setting aside the ex-parte order, the learned senior counsel would submit that the mandatory



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requirements of Order IX Rule 13 of CPC have not been met in the present case. He would state that the petitioner has not stated that he was not put on notice or that he was prevented from sufficient cause to attend the proceedings. Therefore, it is contended by Mr.Vijay Narayan that the petitioner is not entitled to any favourable order, much less, exercise of discretion under Order IX Rule 13 CPC.

7.It is the further contention of Mr.Vijay Narayan, learned Senior Counsel that, even pursuant to the order granting stay, notice has been issued to the petitioner and in support of service of notice, the postal tracking sheet has also been filed. He would further state that the petitioner does not dispute the fact that the said SPAD (Speed Post Acknowledgement Due) was not sent to the correct address. In this regard, he would take me through the admission of the petitioner in the pleadings in the suit with regard to the very same address being shown as the registered address of the petitioner.

8.Further, the learned Senior Counsel, Mr.N.Vijay Narayan, would state that after granting interim stay by this Court, the revision petitioner has filed a memo before the trial Court informing that stay has been granted by this Court

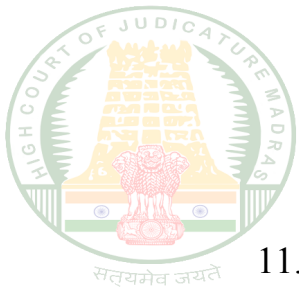


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and for at least ten hearings, the suit has been adjourned on the ground that the matter has been stayed by this Court. He would therefore state that being the plaintiff, the petitioner is deemed to have noticed of the proceedings, before at least the trial Court, where it has been brought to the notice of the Court as well as the petitioner that interim stay has been granted in the above revision. The learned senior counsel would further state that even with regard to the order dated 12.03.2025, the counsel for the petitioner has informed the counsel who normally appears for the respondent.

9.Mr.N.Vijay Narayan, learned Senior Counsel would also take me through the provisions of Order VII Rule 1 of the Appellate Side Rules and state that the petitioner has not come up with any satisfactory explanation making out a case under Order IX Rule 13 of CPC, entitling a re-hearing after setting aside the ex-parte order. He would therefore pray for dismissal of the revision.

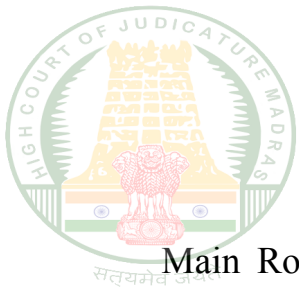
10.I have carefully considered the submissions advanced by the learned Senior Counsel on either side.



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11.It is seen that the matter has been adjourned on 14.06.2024 and 09.07.2024. On 12.03.2025, this Court had directed the counsel for the petitioner to inform the counsel who normally appears for the first respondent and the revision was posted for hearing on 17.04.2025. On 17.04.2025, this Court adjourned the matter to 17.06.2025, extending the interim stay already granted till 17.06.2025. On 17.04.2025, the revision was listed before me and there was no appearance on the side of the petitioner herein and recording the same, I proceeded to hear the counsel for the revision petitioner and Mr.D.Gopal, learned Government Advocate appearing for the respondents 2 and 3 in the revision and allowed the revision, thereby rejecting the plaint in O.S.No.3300 of 2023. Thereafter, the petitioner has come up by way of the present CMP.

12.As rightly contended by Mr.Vijay Narayan, the track consignment sheet indicates that on 03.04.2024, speed post has been booked and dispatched. It has been delivered at Adyar on the addressee, namely the petitioner herein. Even in the present affidavit that is filed in support of the application for setting aside the ex parte order, the address mentioned by the petitioner is No.17/35, 2nd Main Road, Gandhinagar, Adyar, Chennai - 20, now changed to 14/67, 3rd



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Main Road, Gandhi Nagar, Adyar, Chennai – 600 020. Even in the present CMP, the affidavit of the defendant discloses the fact that he has his office at 17/35, 2nd Main Road, Gandhi Nagar, Adyar, Chennai – 600 002. He is the managing director of the petitioner company. Therefore, the speed post notice dated 28.03.2025, dispatched on 03.04.2025, has been sent only to the correct address and with the postal tracking sheet also confirming the delivery of the consignment on the addressee, clearly raises a presumption that there has been proper service of private notice on the petitioner.

13.That apart, as rightly contended by the learned Senior Counsel, Mr.Vijay Narayan, when the suit is pending before the trial Court and the revision petitioner has also filed a memo informing the trial Court about the grant of interim stay on 26.06.2024, the learned trial Judge has recorded the memo that this Court has stayed the proceedings in CRP.No.1418 of 24 and the matter has been adjourned to 05.08.2024. Thereafter, in view of the interim stay granted by this Court, the suit has been adjourned to 28.08.2024, 03.10.2024, 08.11.2024, 07.12.2024, 10.01.2025, 18.02.2025, 18.03.2025, 22.04.2025, 19.06.2025 and finally on 29.07.2025, recording the presence of the plaintiff's counsel and the defendant's counsel and in view of the order passed in this CRP



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on 17.06.2025, the suit has been dismissed as the plaint has been rejected by this Court. When the suit has been adjourned on so many occasions and the daily status of the suit for each hearing date clearly records the factum of the interim stay granted by this Court, as the plaintiff, the petitioner cannot claim that he was unaware to what has transpired in the matter. Therefore, not only did the petitioner was served with private notice as early as on 05.04.2024, but has been totally callous and indifferent in even following up the suit filed by the petitioner for nearly 10 hearings.

14.Coming to the affidavit that is filed in support of the present application to set aside the ex-parte order, excepting for the averments in paragraph Nos.2, 8 and 9, I do not find the other contents pertaining to the setting aside application and major portion of the affidavit is touching upon the merits of the revision and the suit filed by the petitioner before the trial Court. In paragraph No.2, the petitioner claims that he came to know about the order passed by this Court on 17.06.2025, only through an order passed in a writ petition in WP.No.23362 of 2025, where the petitioner was not impleaded as a party. It is not the case of the petitioner that he was not served with notice in the CRP or that he was not aware of the proceedings.



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15.In paragraph No.8, the petitioner only claims that the counsel for the respondent has not informed the counsel for the petitioner and there is a clear intention to cheat the Court and obtain an order behind the back of the petitioner. It is also claimed that the petitioner's counsel was not informed as directed by this Court by order dated 12.03.2025. However, the said fact is denied by the counsel for the revision petitioner stating that the counsel who normally appears for the petitioner has been informed.

16.Both the submissions of the petitioner and the first respondent are based on oral information and there is no proof on either side to substantiate the truth of the statements made by the petitioner / respondent. However, in view of the fact that the petitioner has been served at the registered address and therefore, cannot plead ignorance of not being put on notice about the revision and even thereafter, when the revision petitioner has filed a memo before the trial Court informing the trial Court about the interim stay granted and the matter has been adjourned for at least 10 hearing dates spread over several months altogether, it is surprising that the plaintiff claims that he never knew about the proceedings pending before this Court in the above revision.



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17.In fact, nowadays the status is uploaded in the Court's website and parties are not even dependent on their counsel to know the status of their case. Even from this angle, the total careless and callous attitude exhibited by the petitioner, unfortunately, does not work in its favour to seek exercise of discretion to set aside the ex -parte order.

18.Insofar as reference to Order VII of the Appellate Side Rules, it pertains to service of notices. Rule 1 mandates that every notice issued in respect of proceedings in the High Court has to be sent to the address of the respondent given in the memorandum of appeal or petition, by means of registered post prepaid for acknowledgement. The first proviso enables the Court to order service of notice privately also and the filing in Court of the acknowledgement of such service of notice, together with an affidavit of such service.

19.It is the contention of Mr.ARL.Sundaresan, learned Senior Counsel appearing for the revision petitioner that in view of mandate of Rule 1 of Order



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VII, the notice through Court cannot be dispensed with and when admittedly the petitioner has not been served with Court notice in the revision, the order passed in the revision, ex-parte has to be necessarily set aside.

20.However, placing reliance on the proviso, it is contended by Mr. Vijay Narayan, learned Senior Counsel appearing for the respondent 1 to 4, the Court has the power to order private notice and in the present case, private notice was also ordered and private notice has been served. In compliance with the service of private notice, I find an affidavit of service has also been filed before this Court on 09.04.2024, stating that notice was despatched on 03.04.2024 by speed post with acknowledgement due along with the copy of the papers and that the notice has been duly served and in proof of delivery a tracking report has been annexed to the said affidavit of service.

21.The very object of notice, be it issuing through Court or privately is to put the other party on notice about the proceedings initiated by the petitioner. In the present case the revision petitioner, if it was the case of the petitioner that the private notice was taken to a wrong address and even Court notice has not been served, then probably there may be a justification to accept the plea of the



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petitioner and consider giving an opportunity for the petitioner to advance arguments in the CRP. However, when the very object of issuing notice has been met with not only serve of private notice on 05.04.2024 but also right from the date of filing of the memo before the trial Court not only mentioning that there has been a stay but also furnishing the CRP number and subsequently for as many as ten hearings the matter has been adjourned till such time the CRP was disposed of on 17.06.2025 and pursuant to which on 29.07.2025 the suit has been dismissed in view of the revision being allowed, I do not find that the petitioner has made out any case, much less sufficient cause for setting aside the ex-parte order in the revision.

22.Even Order IX Rule 13 of CPC entitles the Court to set aside the ex-parte decree if the Court is satisfied that summons was not duly served or that the petitioner was prevented by any sufficient cause from appearing when the suit was called on for hearing. Both the limbs are not satisfied in the present case. In fact, it is not even the case of the petitioner, even in his present affidavit seeking to set aside the ex-parte order that the petitioner was not served or that he was prevented from sufficient cause from appearing in the revision. In the light of the above, I am unable to accept the contention



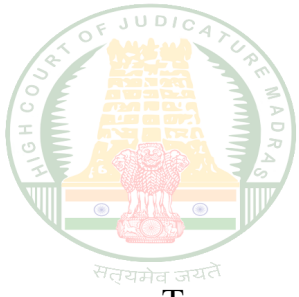
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advanced by the learned Senior Counsel for the revision petitioner,
Mr.ARL.Sundaresan.

23.In fine, the Civil Miscellaneous Petition is dismissed. There shall be
no order as to costs.

22.08.2025

Speaking/Non-speaking order
Index : Yes/No
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To
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The V Assistant City Civil Court, Chennai.



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P.B.BALAJI.J.

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Pre-delivery order made in
CMP.No.19417 of 2025
in C.R.P.No.1418 of 2024

22.08.2025