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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2025

CORAM

**THE HONOURABLE MR.JUSTICE P.B. BALAJI**

**CRP NOs. 4245 & 4248 of 2025**

Kannan

Petitioner in both Revisions

Vs.

Santha Kumar

Respondent in both Revisions

**For Petitioner(s):** Mr.V.Ramesh Vel in both Revisions

**For Respondent(s):** Mr.Pa.Sudesh Kumar in both Revisions

### **ORDER**

Today, the matter is listed under the caption “for being mentioned”.

2. In continuation of the earlier order of this Court dated 07.11.2025, passed in CRP Nos.4245 & 4248 of 2025, paragraph Nos.7, 8, 9 and 11 of the order may be substituted as follows:

“7. It is also brought to my notice by the learned counsel for the **petitioner** that the Application filed for setting aside the exparte decree was prepared even in February 2016 and



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similarly the Application was attempted to be filed along with the written statement and the written statement is also dated 16.02.2016. It is therefore, the contention of the learned counsel for the **petitioner** that even in February 2016, the **respondent** had knowledge of the exparte decree, but however for reasons best known to the respondent, the petition was not filed until 2023. Infact, the learned counsel for the **petitioner** also pointed out to the corrections made in the affidavit filed in support of the application for condonation of delay, in the year 2016 where the month February has been overwritten as September and the year 2016 has been overwritten as 2023. In fact, even in the cause title, I find that the year of I.A. Number has been mentioned only as 2016. I find force in the submissions of the learned counsel for the **petitioner** that the **respondent** had in fact knowledge of the exparte decree even in February 2016 and rightly, the Applications along with the written statement were prepared, but however, there is no explanation as to why from February 2016 onwards, the **respondent** did not take any steps until 27.09.2023, when alone the applications came to be filed before the Court.



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8. Further, the reasons assigned by the **respondent** that he was not in his native place and that he was under the impression that his counsel would inform him about his requirement and that he had gone to Bangalore to work as a Mason and there he suffered frequent health issues and only under such circumstances, the **respondent** was unable to seek setting aside the exparte decree, are also totally unsubstantiated. The **respondent** also attempted to take benefit of the judgment of the Hon'ble Supreme Court *in re*, suo motu Covid 19 orders and attempted to get the delay reduced by 656 days. Unfortunately, the **respondent** is not entitled to seek exemption of the 656 days which can be availed of only when the impugned order or decree was passed during the relevant period which has been set out by the Hon'ble Supreme Court, in any event, which is after the pandemic set in, in 2020. Unfortunately, the Trial Court has believed the version projected by the respondent and proceeded to condone the delay on payment of costs of a mere Rs.2,500/-. The Trial Court also erroneously held that the 656 days must be excluded, even though the Trial Court rightly found that the delay commenced much earlier. Therefore the order of the Trial Court is clearly improper and perverse. The decisions that had



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been relied on were also not relevant to the facts in issue before the Trial Court.

9. Coming to the other argument of the learned counsel for the respondent that the decree is not in consonance with Order XX, Rule 4 of CPC, this Court, no doubt in *R.Stella's* case as well as *S.Chandrasekaran's* case (referred herein supra) has held that even an *exparte* judgment should conform to the requirements and mandate of Order XX, Rule 4 CPC. However the mere fact that the decree passed *exparte* in the present suit does not conform to Order XX, Rule 4 CPC cannot come to the rescue of the **respondent**, to have the delay in filing the application to set aside the *exparte* decree condoned.

11. In the present case, I have already examined the facts and found that the **respondent** had knowledge of the *exparte* decree even in February 2016, but however has chosen to sleep over the matter for close to seven years and filed the application for setting aside the *exparte* decree along with an application for



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condonation of delay only in year 2023. The **respondent** has also mischievously attempted to take benefit of the Covid-19 exemption period which has been granted by the Hon'ble Supreme Court. The **respondent** has therefore clearly been grossly negligent in approaching the Court and the Trial Court, without even properly appreciating the facts and circumstances, has chosen to exercise discretion improperly, by proceeding to condone the delay putting the **respondent** on terms viz., costs of Rs.2,500/-.”

3.All other observations made in the earlier order dated 07.11.2025, shall remain intact.

4.The Registry is directed to issue fresh order copy after carrying out necessary corrections.

**14.11.2025**

smv



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**P.B. BALAJI, J.**

**smv**

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