



CRP.No.4370 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.4370 of 2024
and CMP.No.24338 of 2024

Arunachalam

... Petitioner

Versus

Muthusamy

... Respondent

Prayer: Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair order dated 04.07.2024 passed in I.A.No.1 of 2022 in O.S.No.720 of 2018 on the file of the Subordinate Judge, Omalur, Salem.

For petitioner : Mr.S.Sivakumar

For respondent : Mr.T.Balaji

ORDER

Challenging the impugned order allowing the application filed to condone the delay of 1229 days in filing the petition to set aside the exparte decree dated 22.01.2019, the present revision has been filed.

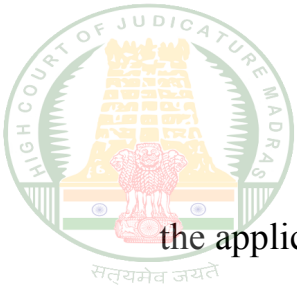
2. The suit has been filed by the petitioner/plaintiff in O.S.No.720 of 2018



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seeking for declaration and specific performance and in alternative, for return of advance amount with interest. The suit was decreed exparte on 22.01.2019. The said decree was sought to be set aside on the ground that since, the lock-down was imposed due to the Covid pandemic, the application could not be filed immediately, further, the counsel for the defendant had also died due to corona virus in October 2021 and thereafter, new counsel was contacted and he had presented the application seeking condonation of delay in setting aside the exparte decree. The same was opposed by the respondent on the ground that no sufficient cause has been shown. The Trial Court had allowed the application vide the impugned order. Challenging the same, the present revision has been filed by the plaintiff/revision petitioner.

3. The main contention raised by the petitioner is that the reasons assigned by the respondent before the Trial Court is not true, the defendant had filed the application for condonation of delay even after one year of covid pandemic, further, in execution petition, the defendant had filed counter and did not conduct the case and there also, he was set exparte and sale deed is also executed in favour of the plaintiff. Therefore, seeks for setting aside of the impugned order allowing



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the application for condoning the delay in filing the petition to set aside the exparte decree and allow this revision.

4. Heard both sides and perused the materials placed on record.

5. What is required under Order 9 Rule 13 of CPC is sufficient cause which prevented the defendants from appearing before the Court when the suit was called on for hearing. Therefore, it is imperative that sufficient cause must be shown by the party. It is relevant to note that though the party has not established sufficient cause while deciding whether there is sufficient cause or not, the Court must also bear in mind the object of doing substantive justice. It is the contention of the revision petitioner that owing to covid pandemic and further, due to the death of the counsel for the petitioner due to corona virus, the petition could not be filed immediately. Though, the conduct of the party in the present case though is not appealing to the satisfaction of this Court, the same cannot be a ground to take away the substantive right.

6. At the outset, this Court is of the view that when the Trial Court has



exercised its jurisdiction properly in giving proper opportunity to the parties to agitate their substantive rights, this revision as against that order is not maintainable in view of this Court. The Trial Court being satisfied with the reasons had allowed that application, even assuming that there is negligence on the part of the parties, substantive rights of the parties cannot be defeated from the very inception. It is relevant to note that the Hon'ble Apex Court in the case of *Robin Thapa vs. Rohit Dora* reported in (2019) 7 SCC 359 held that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits. Therefore, this Court is inclined to grant one more opportunity to contest the suit on merits by the parties.

7. The Trial Court is directed to decide the petition under Order IX Rule 13 of CPC. In the event, the Order IX Rule 13 petition is allowed, the Trial Court shall decide the suit on merits and dispose of the same within a period of four months thereafter. It is made clear that the respondent/defendant shall co-operate in trial and the Trial Court shall not grant unnecessary adjournments.



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WEB COPY 8. Such view of the matter, I do not find any merits in this revision and accordingly, this revision stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

24.06.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

1. The Sub Judge
Subordinate Court, Omalur, Salem

2. The Section Officer
VR Section, Madras High Court

N. SATHISH KUMAR, J.



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