



WEB COPY



CRP No.6034 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-12-2025

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

**CRP No. 6034 of 2025 and
CMP No.29805 of 2025**

1. A.Jayanthi
W/o Raveendran, D.No 38,
Mahalakshmi Garden, Press Colony
Posts, Coimbatore Town.

Petitioner(s)

Vs

1. Nithishkumar Ray
S/o Nathalal Rai, D.No 3-5,
Veererasamy Street, Pudupalayam,
Gobichettipalayam Town.

2.A.Sellamal
D.No 1, Veererasamy Street,
Pudupalayam,
Gobichettipalayam Town.

Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Order dated 12.08.2025 in IA.No.6 of 2024 in OS.No.458 of 2022 passed by the III Additional District Judge, Erode at Gobichettipalayam

For Petitioner(s): Mr. S.Ranjith Kumar



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ORDER

This Civil Revision Petition is filed challenging the order passed by the Trial Court, allowing the application filed by the first respondent/2nd defendant to condone the delay of 160 days in filing the petition under Order IX Rule 13 CPC to set aside the exparte decree passed against him on 08.04.2024.

2. The petitioner herein/ plaintiff filed a suit in O.S.No.458 of 2022 seeking declaration of title and recovery of possession. In the suit, already, the first respondent, who was arrayed as 2nd defendant, was set exparte on 02.12.2023 for his failure to file written statement. Thereafter, exparte decree was passed in the suit. After acquiring the knowledge about the exparte decree, the first respondent herein filed an application to set aside the exparte decree along with the condone delay petition, seeking to condone the delay of 160 days in filing the petition to set aside the exparte decree. The said application was allowed by the Trial Court, by imposing costs of Rs.2,000/- by the first respondent. Aggrieved by the same, the petitioner has come before this court.

3. The learned counsel for the petitioner would contend that the first respondent/2nd defendant failed to give sufficient reason for his failure to file a petition under Order IX Rule 13, within a time prescribed by the law. He further submitted that, the Trial Court has committed an error in allowing the



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application, by taking into consideration the averment made in the affidavit filed in support of the condone delay petition filed by the first respondent that his previous counsel failed to intimate about the date of hearing and hence, he has not filed the written statement in time and further it was stated that he has not received any information from his previous counsel regarding passing of ex parte decree.

4. The suit is filed for declaration of title and recovery of possession. Having regard to the nature of the suit and taking into consideration the substantial rights of the parties, the Trial Court allowed the application by condoning the delay of 160 days in filing the petition to set aside the ex parte decree passed against the first respondent/2nd defendant. Further, the Trial Court, in order to give opportunity to the first respondent/2nd defendant to prove his case, has exercised its discretionary power by allowing the condone delay petition. Hence, I do not find any error to interfere the impugned order passed by the Trial Court.

5. Accordingly, this civil revision petition is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

01.12.2025

Internet: Yes
Index: yes/no
Neutral citation: Yes/No
MST



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To

The III Additional District Judge,
Erode at Gobichettipalayam.



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S. SOUNTHAR, J.

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