



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2025

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

**CRP No. 6324 of 2025 and
CMP.No.31371 of 2025**

1. Tharun Abhiraaj

Petitioner

Vs

1. Uma Parameshwaran

2.U.Archana Devi

3.Dr.Rajasekaran

4.Anuradha

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the judgement and decretal order dated 06-10-2025 passed in IA.No.3 of 2023 in OS.No.1174 of 2018, on the file of the Prl.Subordinate Judge at Coimbatore.

For Petitioner(s): M/S.R.Harinath

For Respondent(s): M/S.P.Saravana Sowmiyan for
R1

ORDER



The Civil Revision petition is filed challenging the order passed by the trial court dismissing the application filed by the petitioner under Order IX Rule 7 of CPC.

2. The respondents 1 and 2 filed a suit seeking declaration that the 1st respondent/1st Plaintiff was the absolute and exclusive owner of the suit property and also for permanent injunction. They also sought for a declaration that sale deed dated 22-02-2006 and power of attorney deed dated 19-01-2006 were null and void and not binding on the 1st plaintiff.

3. The petitioner herein, who was arrayed as 2nd defendant in the suit, was set ex-parte on 04-07-2019. The suit proceeded ex-parte as other defendants were also set ex-parte. The arguments were heard on 20-07-2023 and the matter was adjourned to 10-08-2023 for pronouncement of the judgment. On that day, written arguments was filed on behalf of the plaintiff. Thereafter, again the matter was adjourned to 23.08.2023 for pronouncement of the judgment. At that stage, application has been filed by the petitioner seeking to set aside the ex-parte order passed against him. The said application was dismissed by the trial court on the ground that petitioner failed to file application within three years from the date on which he was set ex-parte and therefore, the application was barred by limitation. Aggrieved by the same, the petitioner has come before this



4. As far as the question of limitation, the conclusion by trial court is not sustainable in view of the decision in ***Pilla Reddy and Others Vs Thimmaraya Reddy and Others reported in (1997)1 MLJ 37***. The relevant portion reads as follows:-

“7. One of the main reasons assigned by the court for dismissing the application is that the application should have been filed under Article 137 of the Limitation Act, i.e., within three years from the date of the Order when they were declared ex parte. Since no application was filed within that time, the court below was of the view that the same is barred.

8. The said finding cannot be correct. It is a pending proceeding, and it is well-settled law that once a suit has been instituted, limitation will not run. In Delhi Development Authority v. Shanti Devi and Another, AIR 1982 Delhi 159, a learned Judge of that High Court said that 'under the Limitation Act no period is prescribed for filing an application for setting aside order proceeding ex parte. Under Rule 7 of Order 9 of the Code the defendant is allowed to file an application at or before the next date of hearing and if he assigns good cause for his non-appearance on the previous date of hearing the court may set aside the order proceeding ex parte. The application by the petitioner-defendant under Order 9, Rule 7 was made on the next date of hearing i.e., 16th August, 1979. Thus it is clear that the defendant-petitioner filed the application in



accordance with Order 9, Rule 7 of the Code. It must therefore be held that the application was filed in accordance with law. There is no rule that an application under Order 9, Rule 7, is to be filed within 30 days from the date of the order proceeding ex parte. The said decision was followed by our High Court in the decision reported in Palani Nathan v. Devanai Ammal, (1989)2 MLJ 259, While considering a similar question, this Court held thus:

“...For filing an application under Order 9, Rule 7, C.P.C., no limitation is prescribed and that it is open to the Court to condone her absence and set aside the ex parte order and permit her to take part in the proceedings at any stage of the proceedings.

.....

9. When the law says that the defendant need show only good cause for his previous non-appearance, it follow that till the matter is being heard, he can come at any time. There cannot be any question of limitation in such cases. The contention of the learned Counsel is; therefore, rejected.”

5. Therefore, Article 137 of Limitation Act would not be applicable to petition filed to set aside the ex-parte order. On that ground, the impugned order cannot be sustained.

6. However, the learned counsel for the respondent, by relying on the judgment of the Hon’ble Apex Court in the case of **Arjun Singh Vs Mohindra Kumar and others reported in AIR 1964 SUPREME COURT 993**, submitted that application to set aside the ex-parte order under Order IX Rule 7 of CPC



was not maintainable when the arguments were heard and the suit was adjourned for pronouncement of judgment.

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7. Order IX Rule 7 of CPC reads as follows:-

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance:-

Where the Court had adjourned the hearing of the suit ex-parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day, fixed for his appearance.

8. The expression “hearing” in Order IX Rule 7 of CPC came up for consideration in the above mentioned case and the Hon’ble Apex Court observed as follows:-

“The opening words of that rule are, as already seen, 'Where the Court has adjourned the hearing of the suit ex parte'. Now, what do these words mean? Obviously they assume that there is to be a hearing on the date to which the suit stands adjourned. If the entirety of the "hearing" of the suit has been completed and the Court being competent to pronounce the judgement then and there, adjourns the suit merely for the purpose of pronouncing judgement under O.XX R. 1, there is clearly no adjournment of "the hearing" of the suit, for, there is nothing more to be heard in the suit. It was precisely this idea that was expressed by the learned Civil Judge when he stated that having regard to the stage which the suit had reached the only proceeding in which the appellant could participate was to hear the judgement pronounced and that on the terms of rules 6 and 7 he would permit



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him to do that. If, therefore the hearing was completed and the suit was not "adjourned for hearing", O.IX R. 7. could have no application and the matter would stand at the stage of O.IX R.6 to be followed up by the passing of an exparte decree making R.13 the only provision in order IX applicable”.

9. Therefore, when the arguments in the suit is heard and the same was adjourned for pronouncement of judgment, it cannot be said that the case was adjourned for hearing of the suit. Therefore, as held by the Hon’ble Apex Court in the above mentioned judgment, the application under Order IX Rule 7 of CPC to set aside the earlier ex-parte order is not at all maintainable when the arguments in the suit was already over and the same was posted for pronouncement of judgment. Following the law laid down by Hon’ble Apex Court in the above mentioned case law, the application filed by the petitioner after the suit was adjourned for pronouncement of judgment is not at all maintainable. Accordingly, I agree with the final conclusion reached by the trial court in dismissing the IA.No.3 of 2023 in OS.No.1174 of 2018.

10. With the above observations, the civil Revision petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index:Yes
Internet:Yes
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To
The Principal Subordinate Judge, Coimbatore.



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