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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 27.11.2025

Order pronounced on : 19.12.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.Nos.5452 & 5453 of 2025

& CMP.Nos.27406 & 27407 of 2025

S.Murugesan (Died)

1.Rajammal

2.S.M.Jayaprakash

... Petitioners in both CRPs

Vs.

1.P.Paramasivam

2.Palaniyammal

... Respondents in both CRPs

Common Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 18.03.2025 passed in I.A.Nos.1 & 2 of 2021 in O.S.No.160 of 2015 on the file of the learned I Additional Subordinate Judge, Salem.

For Petitioners : Mr.L.Ramanathan in both CRPs

For Respondents : Mr.K.Natarajan for R1 in both CRPs



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COMMON ORDER

The defendants are the revision petitioners herein. Challenging the dismissal of I.A.Nos.1 & 2 of 2021, in and whereby an application to condone the delay of 255 days in filing the petition to set aside the ex-parte decree passed in the suit; and to set aside the ex-parte decree passed on 05.10.2018

2.I have heard Mr.L.Ramanathan, learned counsel for the petitioners and Mr.K.Natarajan, learned counsel for the respondents in both the revision petitions.

3.The learned counsel appearing for the respondents would submit that the delay was not inordinate or deliberate and even the delay of 255 days was sufficiently explained. However, the trial Court has erroneously proceeded to dismiss the said application. He would point out that the suit is for specific performance and the valuable rights of the petitioners in the immovable property are at stake and therefore, an opportunity should be give to the petitioners to contest the suit on merits.

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4.Per contra, the learned counsel appearing for the 1st respondent would state that the order of the trial Court is well reasoned order and it does not warrant any interference and he prays for dismissal of the revisions.

5.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the affidavit filed by the petitioners to condone the delay of 255 days.

6.The petitioner has stated that he is aged 80 years old and in view of his old age, he fell down and sustained injuries and he was not in a position to move anywhere, including to meet his counsel and only after receipt of notice in the execution proceedings, the petitioners came to be know about the decree having been passed.

7.The application, no doubt, was resisted by the respondents/plaintiffs, stating that the delay has not been properly explained and also contending that even earlier, the petitioners allowed a decree to be passed ex-parte and therefore, the petitioners are in the habit of dragging the proceedings.



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8.The trial Court, finding merit in the objections of the respondents, has proceeded to dismiss the application.

9.The suit is one for specific performance and admittedly, the plaintiff has contested the suit by filing written statement and only at the stage of trial, due to non-appearance of the petitioners/defendants, the suit was decreed ex-parte. The trial Court has been carried away by the earlier application filed to set aside the ex-parte decree and therefore held that the petitioners are not entitled to condone the delay. The trial Court ought not to have taken note of the earlier proceedings since the Court was considering only the reasons assigned for non-appearance on a specific date, which resulted in the ex-parte decree being passed. In fact, the Hon'ble Supreme Court in *G.P.Srivastava Vs. Shri R.K.Raizada and others*, reported in (2000) AIR (SC) 1221, held that Courts have wide discretion in deciding 'sufficient cause', keeping in view the peculiar facts of each case and that such 'sufficient cause' for non appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. Therefore, when the applicant

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makes out 'sufficient cause' for non appearance on the date fixed for hearing, when he was set ex-parte or proceeded against adversely, then he cannot be penalized by taking into account his previous negligence which the Court has already condoned.

10. In the light of the above and also considering that there is sufficient explanation offered by the petitioners for non-appearance and moreso, considering the advanced age of 80 years, I am inclined to set aside the order of the trial Court, refusing to condone the delay.

11. In fine, the Civil Revision Petitions are allowed and the orders dated 18.03.2025 in I.A.Nos.1 & 2 of 2021 in O.S.No.160 of 2015 on the file of the learned I Additional Subordinate Judge, Salem, are set aside. However, the suit having been instituted in the year 2015 and was in the stage of trial, when it came to be decreed ex-parte, I direct the I Additional Subordinate Judge, Salem, to dispose of the same, on merits and in accordance with law, expeditiously, on or before 31.03.2026. There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.



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Neutral Citation: Yes/No

Speaking Order/Non-speaking Order

Index : Yes / No

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To

The I Additional Subordinate Judge, Salem.

P.B. BALAJI,J.

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Pre-delivery order made in
CRP.Nos.5452 & 5453 of 2025
& CMP.Nos.27406 & 27407 of 2025



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