



CRP(MD). No.164 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Dated : 17.12.2025**

CORAM

**THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

**CRP(MD). No.164 of 2023  
and  
CMP(MD) No.785 of 2023**

S.Pitchai

... Petitioner

Vs

1.P.Muthukumarasamy

2.Kommu Ammal @ Gomathi

... Respondents

PRAYER :-Civil Revision Petition filed under Section 115 of CPC., to set aside the fair and decreetal order of the learned IV Additional Subordinate Judge, Tiruchirappalli dated 05.12.2022 in I.A.No.4 of 2022 in O.S.No.290 of 2013.

For Petitioner : Ms.Rukmani for  
Mr.VR.Shanmuganathan

For Respondents : No appearance

**ORDER**

The plaintiff in O.S.No.290 of 2013 on the file of the IV Additional Subordinate Judge, Tiruchirapalli, has filed the present Civil



CRP(MD). No.164 of 2023

Revision Petition challenging the order dated 05.12.2022, allowing the application filed by the defendants 1 and 2 under Order 9 Rule 7 of C.P.C.

2.Perusal of records would reveal that the suit had been filed for the relief of declaration and for other reliefs. The defendants 1 and 2 in the suit had been set *ex parte* on 10.07.2013. They have filed an application in I.A.No.4 of 2022 seeking to set aside the *ex parte* order, dated 10.07.2013. The said application has been allowed by the trial Court on payment of a cost of Rs.3,000/-. This order is put to challenge in the present Civil Revision Petition.

3.The learned counsel for the petitioner would submit that the defendants 1 and 2 were set *ex-parte* in the year 2013 and the present application has been filed after a period of 9 years. He would further submit that an application under Order 9 Rule 7 of CPC cannot be filed at the stage after conclusion of trial and after crystallization of rights on the parties. In support of his contention, he had relied upon a judgment of this Court in the case of ***M.S.R.Balachandran and others Vs.***



CRP(MD). No.164 of 2023

**A.Sivasamy and others** reported in **2022 (5) CTC 610**, wherein, it had been stated as under:-

*“6.Thus, the stage of the proceedings is shifted from the stage of hearing to the stage of judgment. That means no other proceedings are pending before the learned Judge and the person who was set ex-parte could not seek remedy under **Order IX Rule 7 CPC**. Then, the question would arise as to what is relevant for the person who has been set ex-parte in a matter which is reserved for judgment. Since the proceedings have shifted to the stage of judgment, the parties have got no other option except to wait still the judgment is pronounced and avail their remedy by way of either filing petition under **Order IX Rule 13 CPC** to set aside the ex-parte decree or by way of preferring an appeal by challenging the decree, depending on the result of the case.”*

4.He would further submit that in the suit, arguments were completed and the case was ripe for judgment. He would therefore pray for appropriate orders.

5.When the matter is taken up for hearing on 11.12.2025, there was no representation on behalf of the respondents and even today, none



CRP(MD). No.164 of 2023

appears for the respondents, despite the names of the respondents have been printed in the cause list.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. Admittedly, the defendants 1 and 2 in the suit had been set *ex parte* on 10.07.2013 and they have filed an application seeking to set aside the *ex parte* order, dated 10.07.2013 after a period of 9 years ie., in the year 2022. It is settled that for an application filed under Order 9 Rule 7 of C.P.C., Article 137 of Limitation Act is applicable and therefore, the application filed beyond a period of three years ought not to have been entertained by the trial Court. Further, it is also settled that after setting the defendant *ex-parte*, if hearing is completed and if the Court has posted the case "for judgment", the same is only for the convenience of the Court and the defendant cannot take advantage of it, as there remains nothing to be heard and therefore, **Order 9 Rule 7 of CPC** application cannot be pressed into service at this stage.



CRP(MD). No.164 of 2023

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8. Under these circumstances, the Civil Revision Petition stands allowed and the impugned order dated 05.12.2022 made in I.A.No.4 of 2022 in O.S.No.290 of 2013 on the file of the IV Additional Subordinate Court, Tiruchirappalli, is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No  
NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No  
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**17.12.2025**

To

The IV Additional Subordinate Judge,  
Tiruchirappalli.



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**CRP(MD). No.164 of 2023**

**N.SENTHILKUMAR, J.**

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**CRP(MD). No.164 of 2023**

**17.12.2025**