



WEB COPY

CRP No. 207 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-01-2026

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

**CRP No. 207 of 2024 and
CMP.No.980 of 2024**

1. Santha

2. Viji

3. Muthukumaran

4. Annam

Petitioners

Vs

1. Banumathi

2.Senthilkumar

Lakshmipathy(died)

3.Kirupavathi

4.Punitha

Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the Fair and Decretal order in IA.No.206 of 2022 in OS.No.372 of 2008 dated 02.11.2023 on the file of the Additional District Munsif, Tindivanam.



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For Petitioner(s): N.Suresh

For Respondent(s): M/s.Venkataswamy Babu

ORDER

The civil revision petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner in I.A.No. 206 of 2022 seeking to condone the delay of 139 days in filing petition to set aside the exparte decree that was passed against the petitioners on 20.09.2021.

2. The respondents herein filed a suit for partition. A preliminary decree for partition was passed exparte against the petitioners on 20.09.2021. The petitioners filed an application seeking to set aside the exparte decree on 07.03.2022. Since the said application was not filed within 30 days from the date of exparte decree, the application was filed to condone the delay of 139 days in filing Order IX Rule 13 application. The said application was dismissed on merits by the trial court. Aggrieved by the same, the petitioners have come before this court.

3. The learned counsel for the petitioners by relying on the order passed by the Hon'ble Apex Court in MP.No. 21 of 2022 in MP.No. 665 of 2021 in Suo Motu WP(C).No.3 of 2020 would submit that exparte decree was passed during COVID period and in view of the order passed by the Hon'ble Apex Court, the



period between 15-03-2020 to 28-02-2022 shall be excluded for the purpose of limitation. In that case, there was no necessity for the petitioners to file an application to condone the delay seeking to set aside the ex parte decree.

4. It is not disputed that ex-parte decree was passed on 20.09.2021. The Hon'ble Apex Court in Suo Motu WP(C).No.3 of 2020 clearly held that the period between 15-03-2020 to 28-02-2022 shall be excluded while calculating limitation for filing any application or suit or any other petition. In the case on hand, the ex-parte decree was passed on 20.09.2021. Even though the petitioner failed to file an application to set aside the ex-parte decree within 30 days, in view of the order passed by the Hon'ble Apex court excluding period from 15-03-2020 to 28.02.2022 for the purpose of calculation of limitation, there was no necessity for the petitioners to file application seeking to condone the delay of 139 days. The trial court ought not have insisted filing of application to condone the delay in filing Order IX Rule 13 petition. Therefore, the impugned order passed by the trial court is liable to be set aside. Accordingly, the civil revision petition stands allowed. The trial court is directed to number the Order IX Rule 13 petition filed by the petitioners and dispose of the same in accordance with the law after giving sufficient opportunity to the petitioners. The respondents are at liberty to raise all their objections including the maintainability of the petition. No costs. Consequently, the connected miscellaneous petition is closed.



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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

The Additional District Munsif, Tindivanam.



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**S.SOUNTHAR J.
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