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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-11-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP Nos. 228 and 229 of 2026 and
CMP Nos.1002 and 1005 of 2026

CNR: {HCMA010055932026}

Case QR

T.Kondiah (Deceased),

1. Yosadhama, W/o T.Kondiah,
   No.142, Kamaraj Nagar,
   8th Street, Korukkupet, Chennai-600 021.

2. Bramaiah, S/o.T.Kondiah,
   Rest.at No.142 Kamaraj Nagar,
   8th Street, Korukkupet, Chennai 600 021.

3. Siddaiah, S/o.T.Kondiah,
   Rest.at No.142 Kamaraj Nagar,
   8th Street, Korukkupet, Chennai 600 021.

4. Chinna Brammaiah, S/o.T.Kondiah,
   Rest.at No.142 Kamaraj Nagar,
   8th Street, Korukkupet, Chennai 600 021.

5. Vasantha Kumar, S/o.T.Kondiah,
   Rest.at No.142 Kamaraj Nagar,
   8th Street, Korukkupet, Chennai 600 021.

Cause title accepted vide order dated 09.01.2026 made in CMP Nos.692 and 695 of 2026 in CRP Sr No.4095 and 4096 of 2026.

..Petitioner(s)

Vs

V.Balaji, S/o. M.Venkataraman,
No.136, 6th Block, 2nd Cross Street,
Kaviarasu Kannadasan Nagar,
Chennai-600 118.

..Respondent(s)

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Common Prayer: Civil Revision Petitions is filed under Article 227 of the Constitution of India to set aside the common order passed by the XXI Additional City Civil Court at Chennai dated 11.01.2024 in IA No.1 of 2023 and IA No.2 of 2023 in OS No.2459/2022 .

For Petitioner(s): Mr. Ramardeep
for Mr. K.Thenrajan

For Respondent(s): Mr.J.Ramkumar

COMMON ORDER

Both the Civil Revision Petitions have been filed challenging the common order passed by the Trial Court, dismissing the applications filed by the petitioners seeking to condone the delay of 181 days in filing petition to set aside the exparte decree passed on 19.12.2022 in O.S.No.2459 of 2022 against the petitioners and to set aside the above said exparte decree.

2. The respondent herein/ plaintiff filed above said suit seeking delivery of vacant possession of the property and damages for use and occupation against one T.Kondiah/ defendant and the same was decreed exparte on 19.12.2022. The said defendant filed two applications in I.A.No.1 and 2 of 2023 to condone the delay of 181 days in filing set aside petition and to set aside the exparte decree as stated supra. The Trial Court, by impugned order, dismissed both the applications. As the original defendant, namely T.Kondiah died, his legal heirs have filed the present civil revision petition, challenging

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the impugned orders passed by the Trial Court.

3. The learned counsel for the petitioners would submit that the suit summons was not properly served on the deceased T.Kondiah/defendant and therefore the defendant remained exparte. According to the petitioners, they acquired knowledge about the exparte decree only after receipt of notice in the execution petition. Hence, there was some delay in filing the petition to set aside the exparte decree before trial court by the defendant.

4. The learned counsel for the respondent by taking this court to the impugned order would submit that suit summons was served on the defendant by affixture and notice taken to the defendant was returned with an endorsement refused. Therefore, according to him, proper attempt was made to serve summons to the defendant, however, he refused to receive the same. In such circumstances, according to the counsel, the Trial Court was justified in dismissing the applications filed by the petitioners.

5. In the exparte judgment, the Trial Court recorded that the suit summon was affixed on the door of the defendant, as the premises was found locked. However, in the impugned order, the Trial Court observed that in addition to the affixture of suit summons, notice taken to the defendant was returned with an endorsement " refused". In view of the discrepancy between the exparte

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judgment passed by the Trial and the impugned orders with regard to service of summons to the defendant, this court called for records of the notice papers in the suit from the Trial Court. A perusal of the same would indicate that the Bailif attempted to serve suit summons on the defendant, however, he was informed that the defendant was out of station. The Bailif further noted that the defendant's son expressed unwillingness to receive the summons. Hence, summons was affixed in the door. He also noted that nobody was there to attest his endorsement. Therefore, he returned the summons without any attestation.

6. From the above, it is clear that suit summons was not served personally on the defendant. The return note made by the Bailif was also not properly attested. Further, only one attempt was made by the Bailif to serve summons on the defendant personally. It is also seen from the notice papers that, notice was taken to the defendant through a registered post, however, there was no signature in the postal acknowledgement card. Further, in the postal cover, the seal of the Post Office is not available and refusal endorsement is also not found. However, the Trial Court recorded, as if there was a refusal in the postal cover. In the light of the notice papers received from the Court below, this court comes to the conclusion that no attempt was made to serve summons on the defendant properly in the suit and hence, the reasoning given by the petitioners are acceptable to this court.

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7. In the light of the above discussion, this court feels that an opportunity shall be given to the petitioners to contest the case on merits. Having regard to the length of delay and the reasons assigned by the petitioners and also the fact that the suit summon was not properly served on the defendant, the impugned orders passed by the Trial Court are set aside.

8. Accordingly, CRP Nos.228 and 229 of 2026 are allowed and the impugned orders passed by the Trial Court in I.A.Nos.1 and 2 of 2023 in O.S.No.2459 of 2022, dated 11.01.2024 are set aside. Consequently, the exparte decree passed on 19.12.2022 in O.S.No.2459 of 2022 is set aside. The Trial Court is directed to dispose of the suit in O.S.No.2459 of 2022 on its own merits, as expeditiously as possible. There shall be no order as to costs. Connected miscellaneous petitions are closed.

05-11-2026

Note: Issue order copy on 11.11.2026
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The XXI Additional Judge,
City Civil Court,
Chennai.

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S.SOUNTHAR, J.

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CRP No. 229 of 2026

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