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CRP No. 444 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-03-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CRP No. 444 of 2022

and

C.M.P.No.2292 of 2022

1. Muthusamy
S/o.late Muthusamy Gounder,
Kurukkamapalayam Pudur Village, Koduvai
Via, Kangeyam Taluk, Tiruppur District.
2. Palanisamy
S/o.Late Muthusamy Gounder,
Kurukkamapalayam Pudur Village,
Koduvai Via, Kangeyam Taluk,
Tiruppur District.
3. Ramasamy
S/o.late Muthusamy Gounder, Karaipalayam,
Kokkamapalayam Village, Dharapuram Taluk,
Tiruppur District.

..Petitioner(s)

Vs

1. Selvi
D/o.Late Chinna Thirumalai Gounder,
2/15, Karaipalayam, Kokkamapalayam Village,
Dharapuram Taluk, Tiruppur District.
2. Sounthari
D/o. Late Chinna Thirumalai Gounder, 2/15,
Karaipalayam, Kokkamapalayam Village ,
Dharapuram Taluk, Tiruppur District.

..Respondent(s)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 14.12.2021 made in



IA No.1296/2021 in O.S.No.208/2010 on the file of Hon'ble District Munsif,
Dharapuram.

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For Petitioner(s): Mr.N.Ponraj

For Respondent(s): No appearance
(For R1 & R2)

ORDER

The present Civil Revision Petition has been filed to set aside the fair and decretal order dated 14.12.2021 made in I.A.No.1296 of 2021 in O.S.No.208 of 2010 on the file of Hon'ble District Munsif, Dharapuram.

2. Heard Mr.N.Ponraj, learned counsel for the petitioners.

3. The present revision has been filed, challenging the order passed under Order IX Rule 7 of C.P.C., rejecting the same by holding that the same is barred by law of limitation. The application to set aside the *ex parte* order came to be made on 28.10.2021 by applying Article 137 of the Limitation Act. The same was dismissed as being barred by law of limitation. An application under Order IX Rule 7 would be taken out by the person against whom an *ex parte* order is passed before the next date of hearing.

4. In the present case, even though the said application has been filed belatedly after 10 years, it is to be noted that the suit is for partition and is in the



stage of trial. When the said application was made, recording of evidence has not been completed. In spite of notice to the respondents, the respondents failed to appear before this Court and their names are also printed in the cause list. The e-Court extract of the case status would also indicate that the Court had recorded that there has been a stay of the proceedings and had repeatedly adjourned the case even as of today. In spite of recording of stay granted by the trial Court, the respondents have not taken any steps to appear before this Court to sustain the order passed by the Court.

5. The learned counsel for the petitioners had relied upon a judgment of this Court in the case of ***S.Santha Vs. M.S.M.K.Packiam & another made in C.R.P.(MD) (PD).No.2473 of 2016*** dated ***01.12.2016*** and another judgment of this Court in the case of ***Rajasekar Vs. Govindammal (Late) 1.Dhavamani*** reported in ***2020 (6) CTC 724*** to contend that in filing an application under Order IX Rule 7, Article 137 is not applicable.

6. He had further relied upon another learned Judge's judgment in the case of ***Duraisamy Vs. Aravindh & 2 others*** made in ***C.R.P.(PD)No.2569 of 2021*** dated ***04.01.2024*** and had contended that in a similar circumstance, the defendant therein was permitted, to file written statement, holding that Article 137 was held to be not applicable and that there was no limitation for filing an application under Order IX Rule 7 to set aside an *ex parte* order, and when good



cause is shown, the same could be allowed, and such defendant, who had been set *ex parte* could also be permitted to file his written statement.

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7. I have considered the submissions made by the learned counsel appearing for the petitioners and perused the materials available on record.

8. As rightly pointed out by the learned counsel for the petitioners and supported by the judgments relied upon by him, Article 137 cannot be made applicable, as the Limitation Act cannot be applied to an application under Order IX Rule 7 of C.P.C. Hence, the order passed by the Court below is wholly improper and contrary to the well-established principles of law. Even though the petitioner had contended that in the interest of justice, he should also be permitted to file a written statement on being allowed to participate in the proceedings, this Court is also constrained to take into consideration the fact that the petitioners, who are defendants 4 to 6, had entered appearance before the trial Court and an *ex parte* order came to be passed as they had failed to file their written statement. Such *ex parte* order came to be passed on 11.10.2010 and thereafter, the matter had been repeatedly adjourned and is at the stage of trial for recording of evidence until 18.11.2021, when the present application had been taken out by them.



9. A perusal of the affidavit filed on behalf of the petitioners by the first petitioner would indicate that he had claimed to have suffered from jaundice on the relevant date, which prevented him from giving instructions to his counsel and that there was a failure to file the written statement. The said affidavit is wholly bereft of material facts. Particularly, when he had knowledge of the pendency of the suit, no statement of facts has been made as to when the petitioner had gained knowledge of such *ex parte* order. That apart, the first petitioner has also not stated anything as to why there was a delay of more than 11 years in taking out the application, as the said illness has not been pleaded to have continued for the entire period of delay. Further, it is also to be seen that no reasons have been attributed in respect of the second and third petitioners for not taking out any application to set aside the *ex parte* order passed by the Court.

10. A party is set *ex parte* when summons are served by the provisions of Order IX Rule 6(1)(a) of C.P.C. Order IX Rule 7 of C.P.C., contemplates that when the Court had adjourned the hearing of the suit *ex parte*, the defendant could always, on or before the adjourned date, appear and assigning reasons for his previous non-appearance, then, on terms the Court may direct or otherwise, he could be heard to answer the suit as if he had appeared on the said date fixed. The said provisions have been considered by various judgments and by a learned Single Judge of this Court in the judgment reported in ***Rajasekar Vs.***



Govindammal (Late) I.Dhavamani reported in **2020 (6) CTC 724**, which had been relied upon by the learned counsel for the petitioners placing reliance upon two earlier judgments, one reported in the case of **Gokarakonda Venkatasubbiah Vs. Daliparthi Lakshmiharasimham**, [AIR 1925 Volume 49 MLJ 273] and other, in the case of **Sangram Singh Vs. Election Tribunal, Kotah and others, reported in AIR 1955 SC 525**, wherein it had held Article 137 of the Limitation Act has no relevance to Order IX Rule 7.

11. The relevant paragraphs in the case of **Sangram Singh Vs. Election Tribunal, Kotah and others, reported in AIR 1955 SC 525** had also been extracted by the learned Single Judge of this Court and, for better appreciation, the relevant paragraphs are extracted hereunder:

□ *We have seen that if the defendant does not appear at the first hearing, the Court can proceed ex parte, which means that it can proceed without a written statement; and Order IX, Rule 7 makes it clear that unless good cause is shown the Defendant cannot be relegated to the position that he would have occupied if he had appeared. That means that he cannot put in a written statement unless he is allowed to do so, and if the case is one in which the Court considers a written statement should have been put in, the consequences entailed by Order 8, rule 10 must be suffered...* .

□ *What those consequences should be in a given case is for the Court, in the exercise of its judicial discretion, to determine. No hard and fast rule can be laid down. In some cases an order*



awarding costs to the plaintiff would meet the ends of justice: an adjournment can be granted or a written statement can be considered on the spot and issues framed. In other cases, the ends of justice may call for more drastic. □

Thus, it is clear from the above decisions, there is no limitation for filing a petition under 9, Rule 7, Code of Civil Procedure.”

12. Analysing the aforesaid judgment, the learned Single Judge of this Court in the case of **Rajasekar Vs. Govindammal (Late) I.Dhavamani**, reported in **2020 (6) CTC 724**, had held as follows:

“18. If it is held that an application under Order 9 Rule 7 would be barred due to lapse of time be it 3 years or 30 days, it would automatically mean that an application to set aside the ex parte decree that is made within time after the decree would also be barred. Such a situation was envisaged by the Hon^{ble} Supreme Court, when it held that an order passed rejecting an application under Order 9 Rule 7 will not operate as res judicata, if the defendant chooses to file an application to set aside the ex parte decree. If we are to go by the language of Order 9 Rule 13, the defendant, who has suffered an ex parte decree, has to only explain his absence on the day on which such ex parte decree came to be passed, if he files an application within 30 days of such ex parte decree. Therefore, in my considered opinion, an anomaly will be created, if the Courts are to conclude Article 137 or any other Article of the Limitation Act would apply to an application under Order 9 Rule 7 of the Code of Civil Procedure.



19. I am in entire agreement with the contention of the learned counsel appearing for the petitioner that an application contemplated under Order 9 Rule 7 is, in essence not one to set aside an act of Court, but one seeking permission of the Court to re-open the proceedings and enable the defendant, who was absent to participate in the proceedings as if he were present. It has been repeatedly held that an *ex parte* defendant has a right to participate in the subsequent stages of the same litigation. This Court had even as early as in 1925, in **Gokarakonda Venkatasubbiah v. Daliparthi Lakshmiharasimham**, held that the defendant who had remained *ex parte* can participate in the subsequent proceedings and Order 9 Rule 7 of the Code of Civil Procedure, does not prevent such participation. It only applies to a case, where a party declared *ex parte* seeks to be delegated back to the position which he would have been in, if he had appeared at the previous hearing.

20. Adverting to the decisions which take the view that Article 137 would apply, I can straight away point out that those decisions are against the spirit of the judgments of the Hon^{ble} Supreme Court in **Sangram Singh v. Election Tribunal, Kotah and others**, reported in AIR 1955 SC 425, and **Arjun Singh v. Mohindra Kumar and Others**, reported in AIR 1964 SC 993. Unfortunately, the two decisions of the Hon^{ble} Supreme Court which have a great bearing on the issue before us, viz., the judgment of the Hon^{ble} Supreme Court in **Sangram Singh** ^s case and **Arjun Singh's** case, cited *supra*, were not brought to the notice of the learned Judge, who decided **Visalakshi v. Umapathy**, reported in 2015 (5) CTC 67. The learned Judge has



referred to the decision of the Delhi High Court and concluded that Article 137 would apply to the case on hand.”

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13. From the analysis of the paragraphs extracted above in the aforesaid three judgments, it could be noted that if a litigant who had been set *ex parte* on a particular date of hearing and the suit thereafter stood adjourned to a further date, he could be permitted to continue in the further proceedings. If he chooses to seek to set back the clock and record his appearance on the date when he was set *ex parte*, he shall, on an application showing sufficient cause, either on terms or otherwise, the Court could permit him to participate in the proceedings as if he had appeared on that date. This would mean that if any order has been passed on that day, after setting him *ex parte*, on such sufficient cause shown, such party who had been set *ex parte* could be allowed to agitate the issue that was decided on the said date. But however, he cannot be prohibited from participating in the further proceedings. Such allowing of participation would not undo the proceedings that had concluded on the date when he was set *ex parte*.

14. The petitioners who had made an application under Order IX Rule 7 of C.P.C., have not shown any good cause to put back the clock on the date when they were set *ex parte* for filing their written statement, and hence they cannot be permitted to file the written statement. But however, they could be permitted



to contest the further proceedings, particularly considering the fact that the suit is a suit for partition, which is being contested by the other parties. As the petitioners have been refused permission to file a written statement, as they have not shown a good cause, they could not also be permitted to lead evidence, as there is no pleadings on record on their behalf.

15. With the aforesaid observations, this Civil Revision Petition stands disposed of. Before parting with the case, considering the fact that the suit has been instituted as early as in the year 2010, the Court below is directed to dispose of the suit within a period of six (6) months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The District Munsif,
Dharapuram.



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K.KUMARESH BABU, J.

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