



WEB COPY

CRP No. 941 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2026

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

**CRP No. 941 of 2024 and
CMP.No.4718 of 2024**

Sarasa

Petitioner

Vs

1. Malarvizhi

2. Thenmozhi

Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 22.11.2023 passed IA.No. 319 of 2022 in OS.No. 18/2009 on the file of Principal Sub Court, Tindivanam

For Petitioner(s): Mr.M.Mohanraj
for M/s.D.Senthilkumaar

For Respondents Served-No appearance



ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner/11th defendant in the suit seeking to set aside the exparte order passed against her.

2. The respondents herein filed a suit for partition of their two-third share in the suit “B” Schedule Property. The suit summon was served on the petitioner on 11-03-2009 and thereafter, she was set exparte on 02-04-2009. It is seen from the impugned order that the suit was posted for recording of defendants’ side evidence. At that stage, the instant application has been filed by the petitioner seeking to set aside the exparte order by filing application under Order IX Rule 7 of CPC.

3. In the affidavit filed in support of the petition to set aside the exparte order, it was stated by the petitioner that the respondents/plaintiffs represented to the petitioner that partition suit would be conducted by them on behalf of the petitioner also. However, recently the petitioner acquired knowledge about the exparte order passed against her and hence, the present application has been filed to set aside the exparte order.

4. The trial court dismissed the application mainly on the ground that under Article 137 of the Limitation Act, the petition to set aside the exparte order should have been filed within three years from the date of order and the present application filed by the petitioner after 13 years is barred by limitation. The reasoning given by the trial court is not correct.



5. This Court in ***Pilla Reddy and Others Vs Thimmaraya Reddy and Others reported in (1997)1 MLJ 37*** categorically held that there is no limitation for filing application under Order IX Rule 7 of CPC and if the petitioner therein is able to show good cause for his non-appearance, he can be permitted to participate in the proceedings by setting aside the exparte order. The relevant portion of the observation made by this Court in the above mentioned decision is extracted here under:-

“7. One of the main reasons assigned by the court for dismissing the application is that the application should have been filed under Article 137 of the Limitation Act, i.e., within three years from the date of the Order when they were declared ex parte. Since no application was filed within that time, the court below was of the view that the same is barred.

8. The said finding cannot be correct. It is a pending proceeding, and it is well-settled law that once a suit has been instituted, limitation will not run. In Delhi Development Authority v. Shanti Devi and Another, AIR 1982 Delhi 159, a learned Judge of that High Court said that 'under the Limitation Act no period is prescribed for filing an application for setting aside order proceeding ex parte. Under Rule 7 of Order 9 of the Code the defendant is allowed to file an application at or before the next date of hearing and if he assigns good cause for his non-appearance on the previous date of hearing the court may set aside the order proceeding ex parte. The application by



the petitioner-defendant under Order 9, Rule 7 was made on the next date of hearing i.e., 16th August, 1979. Thus it is clear that the defendant-petitioner filed the application in accordance with Order 9, Rule 7 of the Code. It must therefore be held that the application was filed in accordance with law. There is no rule that an application under Order 9, Rule 7, is to be filed within 30 days from the date of the order proceeding ex parte. The said decision was followed by our High Court in the decision reported in Palani Nathan v. Devanai Ammal, (1989)2 MLJ 259, While considering a similar question, this Court held thus:

“...For filing an application under Order 9, Rule 7, C.P.C., no limitation is prescribed and that it is open to the Court to condone her absence and set aside the ex parte order and permit her to take part in the proceedings at any stage of the proceedings.

.....

9. When the law says that the defendant need show only good cause for his previous non-appearance, it follow that till the matter is being heard, he can come at any time. There cannot be any question of limitation in such cases. The contention of the learned Counsel is; therefore, rejected.”

6. The above said decision has been followed by me in CRP No. 6324 of 2025.

7. In view of the settled law that there is no limitation for filing petition under Order IX Rule 7 CPC, the impugned order passed by the trial court



dismissing the application filed by the petitioner on the ground of limitation is unsustainable. Therefore, the same is set aside. Accordingly, the civil revision petition stands allowed. The trial court is directed to take on file the written statement filed by the petitioner along with the present application and proceed with the matter in accordance with the law. No costs. Consequently, the connected miscellaneous petition is closed.

07-01-2026

Index:Yes/No
Speaking/Non-speaking order
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Neutral Citation:Yes/No
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To
The Principal Sub Court, Tindivanam



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S.SOUNTHAR J.
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