



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 05.01.2026

Order pronounced on : 30.01.2026

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.5048 of 2025
& CMP.No.25455 of 2025

Thulasi Naicker

... Petitioner

Vs.

1.Chitra
2.Meenakshi
3.Gayathri
4.Kanchana
5.Gopalakrishnan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 24.08.2023 made in I.A.No.2 of 2022 in A.S.No.12 of 2016 on the file of the Additional Sub-Judge, Chengalpattu.

For Petitioner : Mr.S.D.Venkateswaran
for S.Ruban Prabu

For Respondents : Mr.V.K.Sathiamurthy



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ORDER

The appellant, aggrieved by dismissal of his application under Order XLI Rule 19 of the Code of Civil Procedure, has come up by way of this revision petition.

2.I have heard Mr.S.D.Venkateswaran for Mr.S.Ruban Prabu, learned counsel for the petitioner and Mr.V.K.Sathiamurthy, learned counsel for the respondents 1 to 5.

3.Mr.S.D.Venkateswaran, learned counsel for the revision petitioner would submit that the revision petitioner, as plaintiff, had filed a suit in O.S.No.166 of 2002 and the said suit came to be dismissed on 31.10.2014 by the District Munsif Court, Chengalpet. He would further state that challenging the judgment and decree, A.S.No.12 of 2016 was filed. However, pending the said appeal, in view of the non-appearance of the petitioner/his counsel, the First Appellate Court had proceeded to decide the appeal on merits. Mr.S.D.Venkateswaran, learned counsel for the petitioner, inviting my attention to Order XLI Rule 17 of C.P.C, would contend that if



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the appellant was absent on the date fixed for hearing the appeal, then the only course open to the Appellate Court was to dismiss the appeal for non-prosecution. In this regard, the learned counsel for the revision petitioner would rely on the decision of the Hon'ble Supreme Court in *Prabodh ch.Das and another versus Mahamaya Das and others* reported in 2020 (1) CTC 237.

4.The learned counsel for the revision petitioner would further state that the mere fact that the Appellate Court has recorded in the judgment that the counsel for the appellant has argued the appeal, should not be put against the appellant and the appellant be made to suffer for the fault of his counsel. He would also refer to the decision of this Court in *Prema and another versus Murugappan*, reported in 2017 (5) LW 158, where this Court referring to Order XLI Rule 17 of CPC, held that the first appeal could have been dismissed only for non-prosecution and could not have been decided on merits, set aside the order passed by the District Court and restored the appeal to file. Relying on the said ratio, the learned counsel for the petitioner submits that the revision under Article 227 is very well maintainable as well. He would therefore pray for the revision being allowed.



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5.Per contra, Mr.V.K.Sathiamurthy, learned counsel appearing for the respondents would first and foremost attack the very maintainability of the revision petition. In this context, he would refer to the dates on which the decree came to be passed, that is dismissing the appeal and also to the date on which the revision has been filed before this Court.

6.Referring to Order XLIII Rule 1(t) of CPC, Mr.V.K.Sathiamurthy would contend that when an order refusing to allow an application filed under Order XLI Rule 19 of CPC is specifically made appealable under the Code and Article 123 also provides for a 30 day period of limitation for challenging the said order, the petitioners have mischievously bypassed the statutory remedy and straight away approached this Court under Article 227 of the Constitution of India.

7.It is the further submission of the learned counsel for the respondents that the application under Order XLI Rule 19 of CPC ought to have been filed, along with an application for condonation of delay, which also has not been done in the instant case. He would therefore state that the



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First Appellate Court has rightly gone into all these facts and circumstances and dismissed the application.

8.As regards the submission of Mr.S.D.Venkateswaran that the counsel for the appellant did not argue the appeal before the First Appellate Court, Mr.V.K.Sathiamurthy would invite my attention to the judgment passed by the First Appellate Court, where the First Appellate Court has specifically referred to the fact that the first appeal has been argued by the counsel for the appellant. The decree also mentions that the counsel for the appellant was present during the final hearing of the first appeal. He would therefore state that this Court will have to go by the notings made by the First Appellate Court, especially, in the absence of an affidavit filed by Mr.C.K.Radha Ravi, the counsel whose name is recorded by the First Appellate Court, as the counsel for the appellant / plaintiff. He would therefore pray for dismissal of the revision.

9.I have carefully considered the submissions advanced by the learned counsel for the parties.

10.No doubt, under Order XLI Rule 17 of C.P.C., when an appeal is



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listed for final hearing and the appellant is not present, the only course open to the Appellate Court is to dismiss the appeal for non-prosecution. In the present case, there are two versions, one projected by the revision petitioner and the other projected by the respondents. According to the revision petitioner, his counsel did not argue the first appeal and the judgment was only an ex- parte judgment. The grievance of the petitioner is that when the appellant was not prosecuting the appeal, the appeal should have been dismissed for non-prosecution and the Appellate Court should not have decided the appeal on merits.

11.No doubt, as contended by Mr.S.D.Venkateswaran, learned counsel for the revision petitioner, excepting for the reference to the name of the counsel for the appellant, there is absolutely no reference in the judgment as to any arguments advanced by the counsel for the appellant. On perusal of the judgment of the First Appellate Court, I find that apart from specifically mentioning that the appeal came up before the learned judge for final hearing in the presence of Mr.C.K.Radha Ravi, counsel for the appellant / plaintiff and the counsel appearing for the respondents, even at paragraph 6, the First Appellate Court has recorded the fact that it has



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considered the submissions and rival submissions. Therefore, I am unable to countenance the submissions of Mr.S.D.Venkateswaran that the appeal was not even argued by the counsel for the appellant in the first place.

12.Though an adjudication in A.S.12 of 2016 has been referred and it reflects that on 24.02.2020 the respondents' arguments were heard and despite sufficient opportunity, the appellant did not come forward for the arguments and the matter was reserved for judgment, liberty was however granted to the appellant to file written arguments. There is no indication in the judgment that written arguments were filed by the appellant, that is the revision petitioner or that the counsel was heard subsequent to 24.02.2020. Therefore, even assuming without admitting for the sake of consideration of the maintainability of the application under Order XLI Rule 19 of C.P.C, the petition to recall the judgment in the appeal was certainly maintainable, especially when it is the categorical case of the petitioner that his counsel did not argue the appeal. However, at the same time, delay stares at the face of the revision petitioner.

13.Under Article 123 of the Limitation Act, any application to recall a



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judgement passed by the Appellate Court, invoking Order XLI Rule 19 of CPC ought to be filed within a period of 30 days from the date of the judgement. Admittedly, the application under Order XLI Rule 19 of CPC was not filed within the said period of 30 days, but long after. I am unable to see how the application was even taken up and numbered, when it was filed without being supported by an application for condonation of delay. In such circumstances, the application under Order XLI Rule 19 of CPC itself was clearly time barred. This defence was, in fact, rightly taken by the respondents as well in their counter to I.A.No. 2 of 2022.

14.The First Appellate Court has firstly found that the appeal was not decided ex-parte, but on merits and secondly, the Appellate Court has also found that even if the application under Order XLI Rule 19 of CPC was maintainable, even then it is barred by limitation, as the application was filed only on 23.08.2021, though it had to be filed within a period of 30 days from 28.02.2020, the First Appellate Court has rightly held the application to be not maintainable and also barred by law of limitation. I do not find any justifiable grounds available to interfere with the said well considered order.



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15. In fine, the Civil Revision Petition is dismissed. No costs.

Connected Civil Miscellaneous Petition is closed.

30.01.2026

Neutral Citation: Yes

Speaking Order

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To

The Additional Sub Judge, Chengalpet.

P.B. BALAJI,J.

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Pre-delivery order made in

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