



O.S.A.No.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2026

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

O.S.A.No.322 of 2025 and
C.M.P.No.23751 of 2025

A.Sharafudeen (Deceased)

1. M/s.Hotel Oriental Towers
Rep. by its Managing Director,
Mr.Ahamed Azad,
No.2889, Srinivasan Pillai Road,
Pudupattinam Vattam,
Thanjavur 613 001.

2. Fareetha Begum

3. Jawahar Banu

4. Ahamed Azad

...Appellants

Vs.

1. P.A.Abdul Jaleel (deceased)

2. Jamal Mohiadeen

3. AJ Sauthaagani

4. Abdul Jaleel Masuthakani

Mrs.Masuthakani Mazhardeen

5. Mahamed Mansoor

... Respondents

(RR3 to 5 brought on record as LRs of deceased R1 vide order dated 13.03.2026 in C.M.P.No.2568 of 2026 in the above appeal)

Prayer: This Original Side Appeal has been filed under Order XXXVI Rule 1 of Madras High Court Original Side Rules r/w. Clause 15 of Letters Patent, to set aside the order dated 26.08.2025 passed in A.Nos.3292 of 2025 in C.S.No.202 of 2022, thereby to condone the delay of 457 days in setting aside the ex-parte decree and judgment dated 05.12.2023 and allow this appeal with cost throughout.



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For Appellants : Mrs.A.L.Gandhimathi, Senior Counsel for
Mr.P.T.Nalin Kumar

For Respondents : Mr.Avinash Wadhvani for RR2 to 5
R1 – died (steps taken)

JUDGMENT

(Judgment of the Court was made by P.VELMURUGAN, J.)

Originally the respondents filed a suit against the deceased appellant for recovery of money before this Court in C.S.No.202 of 2022. Subsequently the legal heirs of the deceased had been brought on record and since even after service, the defendants had not appeared, an ex-parte decree came to be passed on 05.12.2023. The appellants filed two applications in A.Nos.3292 & 3886 of 2025 seeking to condone the delay of 457 days in filing application to set aside the ex-parte decree dated 05.12.2023 and to stay the proceedings in E.P.No.12 of 2025.

2 This Court vide order dated 26.08.2025 dismissed the applications, as against which, the appellants are before this Court.

3 Learned Senior Counsel for the appellants submitted that the respondents originally filed the suit for recovery of money against the deceased defendant before the District Court, Thanjavur and thereafter for want of



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jurisdiction, the suit has been re-presented before this Court. In the interregnum, the original defendant died and the appellants 2 to 4 were brought on record as legal heirs of the deceased defendant. No suit summons were served on the impleaded defendants and the private notice alleged to have served on them were returned with an endorsement “refused”, which is not genuine one. In fact, the appellants are permanent resident of Singapore and at the relevant point of time, they were not in India. Court notice also not served on the appellants.

3.1 Furthermore, on merits also the respondents have no case and they are only relying on the unregistered document. The appellants are now ready to abide any of the conditions and they may be allowed to contest the suit on merits.

4 Per contra, the learned counsel for the respondents submitted that private notice has been duly served on the respondents and the postal endorsement clearly shows that the appellants only refused to receive the summons. Even though the appellants pleaded that they were not India, to prove the same, while they were asked to produce their passport by the Single Judge, only the second appellant alone produced her passport. Therefore the learned Single Judge rightly observed that it cannot be concluded that the appellants were not aware of the suit proceedings.



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Therefore there is no merit in the appeal and the same is liable to be set aside.

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5 Heard the learned Senior Counsel appearing for the appellants and the learned counsel for the respondents and perused the materials on record.

6 Admittedly the respondents filed suit for recovery of money against the deceased defendant and subsequently the appellants 2 to 4 were brought on record as legal heirs of the deceased defendant.

7 A careful perusal of the order passed by the learned Single Judge, which is under challenge, reveal that the private notice has been duly served and the postal endorsement shows that the respondents refused. Even though the appellants took a defence that their passports would prove that at the relevant point of time they were not in India, they failed to produce the passports. The second appellant only produced her passport and the entries made on the same reveal that during the relevant point of time she was in India only.

8 Further the appellants did not examine the postal authorities to prove their defence that the endorsement is not genuine and hence the endorsement made



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in the public document is a conclusive proof, unless the contrary is proved.

However, the suit is only for recovery of money and since they did not appear and contest the suit, ex-parte decree came to be passed and the appellants, who are the judgment debtors, want to contest the suit on merits.

9 Therefore, in order to secure the ends of justice, we are of the view that the appellants may be given an opportunity to contest the suit on merits.

10 Accordingly the order dated 26.08.2025 passed in A.No.3292 of 2025 is set aside on condition that the appellants shall deposit 50% of the decree amount to the credit of E.P.No.12 of 2025 in C.S.No.202 of 2022 within a period of 30 days from the date of receipt of a copy of this order, failing which, the appeal shall stand dismissed automatically without any further reference to this Court. On such deposit, within the time prescribed by this Court, the delay of 457 days in filing the petition to set aside the ex-parte decree is condoned.

[PVJ] [NSJ]
30.03.2026

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