



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 24.02.2026

Judgment pronounced on : 27.02.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.5735 of 2025
& CMP.No.28559 of 2025

R.Ettiraj

.. Petitioner

Vs.

1.P.Kubendiran
2.M.K.Kanmani
3.The Sub Registrar,
SRO, Purasawalkam,
Chennai – 600 023.

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decretal order dated 10.10.2025 passed in I.A.No.1 of 2025 in O.S.No.4110 of 2024 by the learned Principal Judge, City Civil Court, Chennai.

For Petitioner : Mr.Ashok Menon

For Respondents : Mr.NGR.Prasad
for Mr.E.Prabu for RR1 & 2
Mr.A.Anandan
Government Advocate for R3



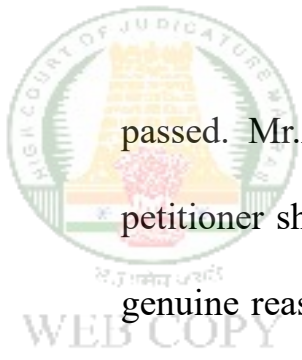
ORDER

The 1st defendant in a summary suit, filed under Order XXXVII of the Code of Civil Procedure is the revision petitioner.

2.I have heard Mr. Ashok Menon, learned counsel for the revision petitioner and Mr.NGR Prasad for Mr.E.Prabhu, learned counsel for the respondents 1 and 2 and Mr.Anandan, learned Government Advocate for the 3rd respondent.

3.Mr.Ashok Menon, learned counsel appearing for the revision petitioner would state that the petitioner was arrayed as the 1st defendant in a summary suit filed in [OS.No.4110 of 2024](#) before the Principal Judge, City Civil Court, Chennai. According to Mr.Ashok Menon, though summons were served on the petitioner, it was his categorical case that the summons along with vakalat were entrusted to a junior advocate attached to a senior on 13.08.2024, with instructions to appear on 14.08.2024, when the suit was listed before the court.

4.Mr.Ashok Menon, learned counsel taking me through the affidavit filed in support of the application to set aside the ex-parte decree would state that the petitioner had specifically brought to the notice of the Court that the junior advocate to whom vakalat had been entrusted had to leave Chennai on medical emergency and he was not in a position to appear on 14.08.2024, which resulted in the ex-parte decree being



passed. Mr.Ashok Menon, referring to Order 37 Rule 4 CPC, would state that the petitioner should not suffer for the non-appearance of the advocate, which too, was for genuine reason. In this regard, Mr.Ashok Menon relies on the decision of this Court in *UCAL Fuel Systems vs Kintetsu Work Express India Private Limited*, reported in 2023 (1) LW 341.

5.It is also the submission of Mr.Ashok Menon, learned counsel appearing for the petitioner that the petitioner has denied his liability to pay even one rupee to the respondent /plaintiff and further, the application was filed within the 30 days window period available and there was no delay at all. In such circumstances, Mr.Ashok Menon would persuade me to set aside the order of the trial Court and give an opportunity to the petitioner to contest the suit by taking out an application for leave to defend.

6.In fact, Mr.Ashok Menon, learned counsel for the revision petitioner would further state that the petitioner was a tenant under the respondent and the respondent refused to give consent for renewal of license to the petitioner which resulted in the petitioner not being able to run the business for a couple of years and writ petitions were filed by the petitioner, as well as the respondents and in such circumstances, even the claim for arrears of rent for a period, when admittedly the petitioner was not in possession, the premises having been locked by the corporation, would not be maintainable and therefore, substantial triable defense is available to the petitioner.



7. Per contra, Mr. NGR. Prasad, learned counsel appearing for the respondents 1 and 2 would state that under Order 37 Rule 4 CPC, special circumstances would have to be made out, entitling the petitioner to an order of setting aside an ex- parte decree. He would state that the suit has been filed admittedly for arrears of rent and in respect of the petitioner, proceedings were initiated before the Rent Controller and subsequently, the respondent has also come into possession of the property, by due process.

8. The suit, according to Mr. NGR Prasad, is only for recovery of arrears of rent and there is absolutely no triable issue that arises for consideration in the suit. He would therefore state that no special circumstance, as mentioned in Order 37 Rule 4, has been made out and the trial Court has rightly dismissed the application. The learned counsel has relied on the decision of the Honourable Supreme Court in *Rajni Kumar vs Suresh Kumar Malhotra and another reported in (2003) 5 SCC 315*.

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

10. Order 37 Rule 4 CPC is usefully extracted hereunder:

“4. Power to set aside decree.—After decree the Court may, under special circumstances set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons



and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.”

11. Even if a suit is filed as a summary suit, (under chapter suit) and an ex-parte decree is passed, the defendant is entitled to have the decree set aside by filing an application under Order 37 Rule 4. As can be seen from the provision extracted herein above, the decree can be set aside at the discretion of the Court, only under special circumstances and on such terms as the Court thinks it fit. Therefore, straight away, I must draw a distinction between Order 9 Rule 13, CPC, which provides for setting aside an ex-parte decree in respect of regular civil suits and under Order 37 Rule 4 CPC, which specifically deals with setting aside an ex-parte decree in a summary suit.

12. Under Order 9 Rule 13 CPC, it is sufficient if the defendant satisfies the Court either that summons was not duly served or that despite service of summons, he was prevented by sufficient cause from appearing, when the suit was called on for hearing. In contrast, Rule 4 of Order 37 bestows a discretion on the Court to set aside the ex-parte decree only under special circumstances. Therefore, the requirement under Order 37 Rule 4 CPC is far more stringent than the requirement under Order 9 Rule 13 CPC. The reason for the same is obvious. The suit itself is filed as a summary suit invoking Order 37 of CPC. Therefore, in such a suit, where specific timelines are drawn up in Order 37 of CPC, the defendant who is set ex-parte, cannot be permitted a hearing on the merits or even be entitled to file a leave to defend petition, unless he makes out special



circumstances. This brings down the discussion to whether the petitioner in the present case has made out any such special circumstance.

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13. Heavy reliance is placed on the decision of this Court in *UCAL Fuel Systems case* (referred herein supra) by the learned counsel for the petitioner, Mr. Ashok Menon. In fact, this Court has relied on the decision of the Honorable Supreme Court in *Rajini Kumar's case* (referred herein supra) which decision is, in fact, also relied on by the learned counsel for the respondent, Mr. N.G.R. Prasad.

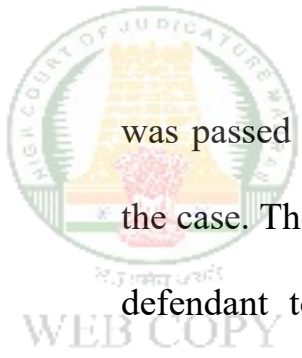
14. On going through the facts in *UCAL Fuel Systems's case* (referred herein supra), I find that it was a case where the defendant, after receipt of summons, had entrusted the vakalat to the counsel and the counsel had misplaced the vakalat. However, the counsel subsequently represented the case and the suit was adjourned to 04.10.2019. However, the suit was taken up for hearing earlier on 26.09.2019 and an ex-parte decree came to be passed. The counsel on record for the defendant in the said case had herself filed an affidavit, narrating the circumstances under which she could not appear and file the vakalat on the assigned date and further, she was also unwell at the relevant point of time and only because of her absence, coupled with the misplacement of the vakalat, the defendant went unrepresented, resulting in the ex-parte decree. Under such circumstances, this Court found the reasons assigned by the defendant to fall within “special circumstances”.



15. Unfortunately, in the present case, the junior counsel, who according to the petitioner, was entrusted with the vakalat and had to leave Chennai, on account of his father-in-law's ill health, has not filed any affidavit affirming the version projected by the petitioner. This is also not a case where the hearing of the suit was advanced despite having been adjourned to 04.10.2019 and a decree came to be passed on 26.09.2019 itself. Therefore, on facts, I am unable to apply the ratio laid down in *UCAL Fuel Systems case* (referred herein supra) to the facts of the present case.

16. In *Rajini Kumar's case* (referred herein supra), the Hon'ble Supreme Court held that the expression, "special circumstances" is not defined in the Code of Civil Procedure and it is also not capable of any precise definition by the Court because of the problems of human beings being so varied and complex. However, the Hon'ble Supreme Court held that while deciding an application on Order 37 Rule 4 CPC, the Court has to determine the question, on the facts of each case, as to whether circumstances pleaded are so unusual or extraordinary as to justify putting the clock back, by setting aside the decree and to give leave to the defendant to appear to the summons and defend the suit and that the appellant had shown sufficient cause for absence.

17. On facts, in fact, the Honorable Supreme Court held that even though the appellant had shown sufficient cause for his absence on the date on which the decree



was passed ex-parte, he had failed to disclose facts which would entitle him to set aside the decree in the case. The Honorable Supreme Court, in fact, further held that it is not enough for the defendant to show special circumstances which prevented him from appearing or applying for leave to defend, he has to also show by affidavit or otherwise, facts which would entitle him leave to defend the suit.

18. Applying the ratio laid down by the Hon'ble Supreme Court to the facts of the present case, as already discussed herein above, the petitioner may have at best explained the absence of the counsel on the date on which the suit was called and the petitioner was set ex-parte. However, "special circumstances", which are to be made out before entitling the petitioner to set aside the ex-parte decree, have not been set out in the affidavit, excepting for a bald unsupported claim that the petitioner is not liable to pay even one rupee to the decree holder. Insofar as the reference to the writ proceedings, locking and sealing of the tenanted premises, these are not forming part of the affidavit filed in support of the application to set aside the ex-parte decree and I am unable to rely on any of these additional documents that are now filed for the first time in revision.

19. For all the above reasons, the petitioner has not made out any "special circumstances" which mandated under Rule 4 of Order 37 of CPC. The Court below has rightly dismissed the application, finding that no special reason exists, warranting an



order setting aside the ex-parte decree. I do not find any perversity or illegality in the findings of the trial Court, warranting interference in revision.

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20. In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

27.02.2026

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

The Principal Judge, City Civil Court, Chennai.



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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.5735 of 2025
& CMP.No.28559 of 2025

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