



C.M.A.No.3847 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.01.2026
Pronounced on	06.02.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No. 3847 of 2025 and CMP No.32117 of 2025

Ms.P. Mala

...Appellant

Vs.

G. Krishnakumar

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(c) CPC praying to set aside the impugned Docket Order dated 20.11.2025, made in I.A. No.7 of 2024 in O.S. No.5652 of 2022, on the file of the XVII Additional City Civil Court, Chennai.

For Appellant : Mr. Rathina Asohan

For Respondent : Mr. K. Pattabhi

JUDGMENT

Aggrieved by the docket order dated 20.11.2025 passed in I.A. No.7 of 2025 in O.S.No.5652/2022 seeking to set aside the *ex parte* decree dated 14.08.2023, passed by the XVII Additional City Civil Court, Chennai, on the



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ground of non payment of cost of Rs.5,000/- imposed, on or before 19.11.2025, the present Civil Miscellaneous Appeal is preferred by the appellant.

2. The respondent as plaintiff filed a suit for recovery of Rs.31,23,014/- against the appellant/defendant. According to the appellant/defendant, the respondent/plaintiff furnished a wrong address of the appellant/defendant and obtained an *ex parte* decree on 14.08.2023. Further, the respondent has initiated executing proceedings in E.P. No.755/2024 before the XXVI Assistant City Civil Court, Chennai, and obtained an order of attachment of house property in which the appellant has 1/7 undivided share. The contention of the learned counsel for the appellant/defendant is that the counsel was not keeping well from 03.11.2025 and could not follow the proceedings in the suit and therefore, I.A. No.7/2024 was dismissed for non payment of cost imposed. Thereafter, on 22.11.2025, the Advocate clerk informed the appellant/defendant about the dismissal of the said application in I.A. No.7/2024 filed by the appellant / defendant for setting aside the *ex parte* decree dated 14.08.2023. The non payment of the cost was only due to inadvertence and therefore, prayed for setting aside the docket order dated



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20.11.2025 passed in I.A. No.7 of 2024.

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3. The same is resisted by the respondent, stating that, the appellant addressed a letter namely confirmation of loans marked as Ex.A1 dated 06.10.2021 from the address New. No.20, 3rd street, West CIT Nagar, Chennai 600 035, which is the last communication by the appellant and hence, the respondent sent the notice to the said address. It is for the appellant to intimate the post master about the change of address. The appellant never intimated any change of address either to the respondent or to the postal authorities. The conduct of the appellant acquires importance and once it is proved that summons have been sent by registered post to a correct and given address, a bald assertion without evidence that registered letter was not tendered would not be sufficient to discharge the statutory burden caused on the appellant. To support his contentions, he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Basant Singh and another vs. Roman Catholic Mission*** reported in ***(2002) 7 SC 531***. Hence, the plea taken by the appellant that she was not aware of the proceedings is only an after thought. It is submitted that though the suit was decreed *ex parte*, the same was decided on merits of the case. It is further submitted that the reason stated by the



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appellant is not sufficient to set aside the order passed by the trial court. It is further submitted that, since no proceedings are pending before the trial court, the prayer for staying all proceedings before the trial court is misconceived. The learned counsel however, submits that in the event the appeal is allowed, the appellant may be directed to deposit atleast 50% of the claim amount and fix a reasonable time for expeditious disposal of the suit.

4. Heard on both sides. Records perused.

5. The appellant submits that she has fair chances of success in the suit and therefore, prays for an opportunity to contest the suit. Though it is not in dispute that, it is the duty of the appellant to inform the respondent and the postal authorities about the change of address, however, in order to give an opportunity to the appellant in the interest of justice, this Civil Miscellaneous Appeal is allowed on condition that the appellant shall deposit 50% of the decretal amount on or before 23.02.2026 to the credit of O.S.No.5652 of 2022, on the file of the XVII Additional City Civil Court, Chennai, failing which, this Civil Miscellaneous Appeal stands dismissed, without further reference to this Court. On such deposit, the trial court shall set aside the *ex*



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parte decree dated 14.08.2023 passed against the appellant and afford an

opportunity to the appellant to contest the suit. The trial court shall dispose the suit within a period of three months from the date of such deposit. No costs.

Consequently, connected miscellaneous petition is closed.

06.02.2026

bga

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

The XVII Additional District Judge,

XVII Additional City Civil Court, Chennai



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K.GOVINDARAJAN THILAKAVADI, J.

bga

Pre-delivery judgment in

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