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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20/11/2025

CORAM

THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

CRP(MD)No.789 of 2024

1. Raman
2. Periyannan
3. Deivanai ... Petitioners

Vs

Periyasamy Died
1.Nataraj
2. Neelamegam
3. Saroja
4. Darmaraj ... Respondents

PRAYER :- Civil Revision Petition filed under Section 115 of Civil Procedure Code prayed that this Honourable Court may be Pleased to call for the records pertaining to the fair order and decreetal order dated 09.01.2024 in IA.No.2 of 2023 in O.S. No.37 of 2018 on the file of the District Munsif Court, Thuraiyur and to set aside the same

For Petitioner : R.Gowrishankar

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ORDER

When this Civil Revision Petition was taken up for hearing earlier, the learned Judge referring to the judgment of the Hon'ble Apex Court in the case of ***Koushik Mutually aided Cooperative Housing Society Vs Ameena Begum and others (2023 INSC 1065),*** indicated that the Civil Revision Petition was not maintainable.

2. The learned counsel for the petitioner agreeing to the view of the learned Judge, had made an endorsement to that effect. However, today when the case was listed before this Court under the caption “For Withdrawal”. The learned counsel for the petitioner produced another judgment of the Hon'ble Apex Court in the case of ***C.Prabhakar Rao and others VS Sama Mahipal Reddy and others*** reported in ***2025 SCC Online SC 495***.

3. A perusal of the judgment indicated that the Hon'ble Apex Court examined the consequences of dismissal of an application for condonation of delay and consequence of dismissal of an application to set aside the *ex parte* decree.

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4. The Hon'ble Supreme Court held that the remedies against those orders are independent and that one remedy should not be allowed to subsume the other. For better appreciation, the relevant portion of the order extracted hereinunder:

> *10. We straightaway agree with the submission made by Mr. Raavi Yogesh Venkata. It is evident that the revisional jurisdiction of the High Court was invoked only against the order passed by the Trial Court in condoning the delay in filing the application for setting aside the ex-parte decree.*
>
> *11. To start with, facts and events relating to passing of an ex-parte decree are distinct from the facts and events relating to the delayed filing of the application for setting aside of the ex-parte decree. Secondly, the procedure for setting aside the ex-parte decree will again be distinct from the procedure for condoning the delayed filing of the application to set aside the ex-parte decree. Thirdly, the adjudication and determination of a court with respect to setting aside the ex-parte decree are independent of the adjudication with respect to condoning the delay. Finally, the remedies against these orders are independent and one remedy would not subsume the other. They must be adopted and pursued independently. This much of clarity is sufficiently borne by our practice and procedure of law. The order passed by the High Court setting aside the ex-parte*

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decree when no revision is filed against the said order of the Trial Court in I.A. No. 1163 of 2021 cannot be sustained.

5. Based on the aforesaid judgment, the learned counsel for the petitioner had now filed a memo seeking permission of this Court to withdraw the earlier endorsement made in this civil revision petition and further permission to make submission on merits in this civil revision petition.

6. A perusal of the order as extracted above would clearly indicate that the remedy available against the order dismissing an application for condonation of delay and the remedy available against the order dismissing an application to set aside an *ex parte* decree are independent and these remedies should not be allowed to subsume one other. The same would indicate that when the application to condone the delay in setting aside the *ex parte* decree is dismissed, even if the consequential order is passed, the revision against the order would be available and the petitioner cannot be directed to avail the appellate remedy even as against the order dismissing the condonation petition.

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7. In such view of the matter, this Court accepts the petitioner's memo requesting permission to withdraw the endorsement made by him to withdraw the civil revision petition.

8. The said memo stands recorded. Post the matter in the first week of January 2026 for filing counter.

20.11.2025

SN

TO

1.The District Munsif Court, Thuraiyur.

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