



C.R.P. (MD) No. 1216 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2026

CORAM

THE HON'BLE MR. JUSTICE **N.SENTHILKUMAR**

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Arockiadoss (Died)

1.A.Mary Jayarani

2.Mary Packia Vimala

3.A.George Sahaya Rubi

4.A.Packia Sahaya Sekar

5.A.James John Arther

... Petitioners

-VS-

Mercy (Died)

1.Sahaya George

2.Wilson George

... Respondents

PRAYER:- Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decental order dated 09.09.2022 in I.A. No. 382 of 2014 in O.S.No.483 of 2004 on the file of the II Additional District Munsif, Tiruchirappalli and allow this Civil Revision Petition.

For Petitioners : No appearance
For R1 : Mr.J.Sulthan Basha



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ORDER

This Civil Revision Petition invoking Section 115 of the Civil Procedure Code, arises out of the order dated 09.09.2022 in I.A.No.382 of 2014 in O.S.No.483 of 2004 on the file of the II Additional District Munsif, Tiruchirappalli (hereinafter referred to as the 'Trial Court' for short). The parties are hereinafter referred to as per their description in the suit in O.S.No.483 of 2004 before the Trial Court for the sake of clarity and convenience.

2.Heard Mr.J.Sulthan Basha, Learned Counsel appearing for the first plaintiff and perused the materials placed on record, apart from the pleadings of the parties.

3.The plaintiffs have filed a suit in O.S.No.483 of 2004 before the Trial Court, in which the defendants remained *ex parte* and the relief sought in the suit had been granted by judgment and decree dated 24.03.2011. Subsequently, the defendants have filed an unnumbered application before the Trial Court to set aside that *ex parte* decree under Rule 13 of Order IX of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC' for short), along with an application in I.A.No.382 of 2014 to condone the delay of 1076 days in filing it under Section 5 of the Limitation Act, 1963, which has been dismissed by the



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impugned order and has been challenged by the defendants in this Civil Revision Petition.

4. At this juncture, it must be highlighted that the Hon'ble Supreme Court of India in ***Koushik Mutually Aided Co-operative Housing Society -vs- Ameena Begum*** (Order dated 01.12.2023 in Civil Appeal @ Special Leave Petition (C) No. 5489 of 2021) has laid down the dictum that only an appeal under Rule 1(d) of Order XLIII of the CPC, would have to be preferred against an order refusing to set aside an *exparte* decree in a suit, even when the application to condone the delay in filing it has been dismissed. It is found upon the premise that when the application to condone the delay in filing the application to set aside the *exparte* decree gets dismissed, it would logically follow that the application to set aside the *exparte* decree under Rule 13 of Order IX of the CPC also stands automatically dismissed, whether or not, a specific order is actually passed in that regard. It would be evident on a plain reading of Section 5 of the Limitation Act, 1963, that it does not require filing of a separate application to condone the delay in filing an application, though there has been a long standing requirement in the Courts across the State of Tamil Nadu insisting for it. In this context, it would be relevant to notice that the Hon'ble Supreme Court of India in ***N. Balaji -vs- Virendra Singh*** [(2004) 8



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SCC 312] has held that when power to condone delay has been conferred by a statute, such power could be exercised even without a separate application for it, in the absence of a mandate to the contrary. Further, the Hon'ble Supreme Court of India in *A.Venkatasubbiah Naidu -vs- S.Chellapan* [(2000) 7 SCC 695] has held that in an appeal under Rule 1 of Order XLIII of the CPC would lie against the inaction of the Trial Court to dispose an application for temporary injunction under Rule 3-A of Order XXXIX of the CPC within thirty days treating it as a deemed order.

5. On an conspectus of the aforesaid principles, it must be held that when an application to condone the delay in filing an application to set aside a *ex parte* decree is dismissed, it shall be treated as an order rejecting the application under Rule 13 of Order IX of the CPC to set aside the *ex parte* decree that would be appealable under Rule 1(d) of Order XLIII of the CPC before the concerned Appellate Court. In view of the aforesaid authoritative pronouncement of the Hon'ble Supreme Court of India, which now holds the field, the Defendants have to be relegated to file such appeal, and it would not be possible for them to pursue a Civil Revision Petition under Section 115 of the Civil Procedure Code for it, though such practice has been prevalent all along in this Court.



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6. In the result, the Civil Revision Petition is disposed with the aforesaid observation. No costs.

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Index : Yes/No

NCC : Yes/No

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Note: Registry is directed to return the original impugned order, if any under written acknowledgment after retaining a copy of the same for record.

To

1. The II Additional District Munsif, Tiruchirappalli.
2. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SENTHILKUMAR, J.

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