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CMA(MD)No



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15-04-2026

CORAM

THE HONOURABLE MR JUSTICE K.MURALI SHANKAR

CMA(MD) No.261 of 2026
and
CMP(MD) No.2393 of 2026

C.Selvanayagam

**Appellant/
Petitioner/
Defendant**

Vs

J.Augustin

**Respondent/
Respondent/
Plaintiff**

This Civil Miscellaneous Appeal filed under Order 43 Rule 1(d) of Civil Procedure Code praying to set aside the fair and decreetal order dated 04.02.2025 made in I.A.No.01 of 2024 in O.S.No.55 of 2018 on the file of the Sub Court, Padmanabhapuram and allow the civil miscellaneous appeal.

For Appellant: Mr.S.Sankar, Advocate

ORDER

The Civil Miscellaneous Appeal is directed against the order dated 04.02.2025 passed in I.A.No.1 of 2024 in O.S.No.55 of 2018 dismissing the petition filed under



Section 5 of the Limitation Act seeking condonation of delay in filing the application for setting aside the ex-parte decree under Order IX Rule 13 C.P.C.

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2. The learned counsel appearing for the appellant would submit that originally challenging the said order, a revision came to be filed and as per the instructions of the Registry, civil miscellaneous appeal has been filed.

3. In a similar fact situation, in a batch of Civil Miscellaneous Appeals, in C.M.A. (MD)No.101 of 2026 and batch cases, this Court has specifically held that the order passed under Section 5 of the Limitation Act to condone the delay and the petition to condone the delay in representing the papers are not appealable orders and on that basis, directed the Registry to convert the Civil Miscellaneous Appeals into the Civil Revision Petitions and the relevant portions are extracted hereunder:

*“3. The learned Counsel for the appellants would submit that this Court, relying upon the decision of the Hon'ble Supreme Court in the **Koushik Mutually Aided Co-operative Housing Society Vs. Ameena and another (2023 INSC 1065)** had observed that the Civil Revision Petitions were not maintainable and on that basis directed the Registry to re-register the Civil Revision Petitions as Civil Miscellaneous Appeals and in pursuance of the said directions, the Civil Revision Petitions came to be converted into Civil Miscellaneous Appeals. They would further contend that an order dismissing the petition filed under Section 5 of the Limitation Act is not an appealable order and that an*



appeal would lie only against the dismissal or rejection of a petition filed under Order IX Rule 13 C.P.C., or under Order IX Rule 9 C.P.C., and that there is no merger of the order dismissing the petition filed under Section 5 of the Limitation Act with any consequential order of rejection in the petition filed under Order IX Rule 13 C.P.C., or under Order IX Rule 9 C.P.C.

*4. The learned Counsel would place reliance on the decision of the Hon'ble Supreme Court in **C.Prabhakar Rao and another Vs. Sama Mahipal Reddy and another** reported in **2025 SCC Online 495**. In the said case, the plaintiffs had obtained an exparte decree in a suit for specific performance, based on an agreement for sale. The defendants thereafter filed an application for setting aside the exparte decree along with a petition under Section 5 of the Limitation Act to condone the delay in filing such application for setting aside the exparte decree. The trial Court declined to condone the delay and consequently dismissed the application filed under Order IX Rule 13 C.P.C., for setting aside the exparte decree. The defendants filed a revision challenging the order refusing to condone the delay and the High Court, while condoning the delay, proceeded to set aside the exparte decree and restored the suit for further hearing. When that order was challenged, the Hon'ble Apex Court has dealt with the scope of the petition filed under Section 5 of the Limitation Act to condone the delay vis-a-vis the application for setting aside the exparte decrees and the relevant passage is extracted hereunder:*

“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



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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 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. The Hon’ble Apex Court has categorically held that the scope of a petition filed under Section 5 of the Limitation Act and that of an application filed under Order IX Rule 13 C.P.C. are entirely distinct. It has further been observed that the adjudication and determination of both petitions are independent, and the remedies available against the orders passed therein are also separate and independent. One remedy does not subsume the other, and each must be pursued in accordance with law. As rightly contended by the learned counsel for the appellants, the Hon’ble Apex Court has, in effect, clarified that there is no merger of an order dismissing a petition for condonation of delay with the order rejecting or dismissing the application for setting aside the ex parte decree, and that both orders stand on independent footing.



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6. *It is pertinent to note that an order dismissing an application for condonation of delay is not a decree, but only a procedural order, which is revisable and not appealable. On the other hand, an order rejecting an application for setting aside an ex parte decree is an appealable order under Order XLIII Rule 1(d) C.P.C. Ordinarily, when a petition filed under Section 5 of the Limitation Act is dismissed, the application filed under Order IX Rule 13 C.P.C. or under Order IX Rule 9 C.P.C., whether numbered or otherwise, is consequently rejected or closed. Whatever be the form of such consequential order, the substantive order remains the dismissal of the petition for condonation of delay, which is neither a decree nor an appealable order. Therefore, the appropriate remedy would be by way of a Civil Revision Petition under Section 115 C.P.C. In view of the above, the Civil Miscellaneous Appeals challenging the dismissal of the petitions filed under Section 5 of the Limitation Act are not maintainable in law.”*

4. In view of the above, the Registry is directed to convert the civil miscellaneous appeal into civil revision petition within a period of ten days from the date of receipt of copy of this order. The Registry is further directed to refund the excess Court fee if any paid on the civil miscellaneous appeal to the appellant.

15-04-2026

CSM
To
The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.