

## G. Krishnamoorthy Vs Arulmighu Sri Pataleeswarar Devasthanam

**Court:** Madras High Court

**Date of Decision:** Oct. 9, 2009

**Acts Referred:** Civil Procedure Code, 1908 (CPC) " Order 9 Rule 13  
Limitation Act, 1963 " Section 5

**Citation:** (2009) 5 LW 844 : (2010) 1 MLJ 1090

**Hon'ble Judges:** S. Palanivelu, J

**Bench:** Single Bench

**Advocate:** M. Govindaraj, for the Appellant; K. Chandrasekaran, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

The petitioner is defendant in O.S. No. 151 of 2002 on the file of the District Munsif Court, Cuddalore. The suit was

decreed ex parte on 29.04.2003 because of the non-appearance and non-filing of the written statement of this petitioner. Hence, he filed an

application under Order 9 Rule 13 CPC alongwith application u/s 5 of the Limitation Act to condone the delay of 993 days in filing such

application.

2. In the affidavit, he has stated that he engaged Mr. S. Sriramulu, Advocate to conduct the case, that he was then and there contacting his counsel

and he was replied that the case did not come up for trial and he would inform when the case was posted in the list, that while he asked him in

December 2005 also, he told as above, that not convinced with his reply, he asked another lawyer to check up the case bundle and to his surprise,

he came to know that he was set ex parte on 24.09.2003 for non-filing of the written statement, that he has got good case in the suit and that since

Mr. S. Sriramulu did not inform the date of hearing, the ex parte decree was passed and hence the delay has occurred and the same may be

excused.

3. In the counter filed by the respondent, the allegations in the affidavit have been controverted. It is further stated that the petition is bereft of

material particulars, that the petitioner has to explain each and every day delay, that the respondent has levied execution proceedings for delivery of

the property in E.P. No. 432 of 2005 and the petitioner has been successfully evading the service of summons and that the petitioner's aim is only

to protract the proceedings.

4. The learned District Munsif, Cuddalore dismissed the application not satisfied with the reasons adduced for the delay. The learned Counsel for

the petitioner would submit that the petitioner was all along ready to participate in the trial, however due to non-communication on the part of his

earlier counsel, he could not appear before the Court. In support of his contention, he placed reliance upon a decision of Supreme Court reported

in Rafiq and Another Vs. Munshilal and Another, wherein Their Lordships while discussing an identical situation, were pleased to observe as

follows:

3. ... After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the

appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to

effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High

Court with regard to his appeal nor is he to act as a watch-dog of the advocate that the latter appears in the matter when it is listed. It is no part of

his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when

they do not like a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do

not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not repute. What is

the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject

this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose

interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate admission, or

misdemeanor of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally.

We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party

to an innocent party suffering injustice merely because his chosen advocate defaulted.

5. Following the principles contained in the above said decision, it is held that if the reason that the petitioner did not receive communication from

his lawyer is true, then the Court may consider condoning the delay. The petitioner has stated in his evidence in support of the allegations contained

in the affidavit. Since the reason appears to be true, this Court is of the view that the delay may be condoned provided that the other side has to be

compensated in terms of money for the inconvenience caused to him.

6. In fine, the Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs. 7,000/- to the learned Counsel for the

respondent on record before this Court, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently,

the connected Miscellaneous Petition is closed.