

UPLOADED ON 04.06.2026

IN THE COURT OF PRINCIPAL COMMERCIAL COURT,
EGMORE, CHENNAI

Present: Thiru. S.GANAPATHISAMY, B.A.B.L.,
Principal Judge

Dated this 4th day of June 2026, Thursday

I.A.No. 4 / 2026 in C.O.S. No.249 / 2024

K.V. Mohgandass,
Prop. of M/s. Choice Electricals,
Old No.134 New No.252,
Angappa Naicken Street,
Chennai - 600 001.

...Petitioner/Defendant

- Versus-

1. Mr. Badruddin Mohammad Ali
2. Mrs.Mariam Badruddin
3. Mr. Haider Badruddin,
4. Mr. Quresh Badruddin,
5. M/s. Mohammedally Dehgamwala,

Public Charitable Trust,
Represented by Trustee,
Mr. Taher Huseny Bhagat,

Represented by POA agent
Mr. Quresh Badruddin,

all are at
Old No.158, New No.325,
Linghi Chetty Street,
Chennai – 600 001.

...Respondents/Plaintiffs

This Petition coming on this day for final hearing on 15.04.2026 before me in the presence of M/s. S.J. Nakkheeran, S. Guhan, and S. Kavin Brijesh, learned counsels for Petitioner/Defendant; of M/s. Shah & Shah, Dilip Kumar and Dhruv A. Thaker, learned counsels for the Respondents /Plaintiffs and upon perusing the documents and hearing the arguments of Petitioner side and having stood over for consideration till this day, this court today delivers the following:

ORDER

The Petitioner/defendant has come forward with this application under Order IX Rule 13 read with Section 151 of Code of Civil Procedure to set aside the exparte decree dated 13.11.2024 passed in COS No.249 of 2024 against the defendant.

The averments of the affidavit filed in support of this application are shortly as follows:

1. The name of petitioner is Mohandas and not Mohgandass as mentioned in the cause title of the plaintiff. The Respondents filed the main suit for recovery of rental arrears. The plaintiffs leased out a building bearing old No.134 New

door No.252 Angappan Naicken Street, Chennai to the defendant. He was running his business under the name and style of M/s. Choice Electricals. The respondents filed RLTOP No.782 of 2021 for eviction and it was allowed on 19.01.2023. The plaintiff filed EP No.376 of 2023 for evicting the defendant. The defendant through his counsel handed over keys of rented premises to the counsel for plaintiff on 05.08.2024 and the EP was terminated on the same day. The defendant shifted his business to old No.50, New door No.103, Armenian Street, Chennai – 600 001. The plaintiffs filed the suit on 03.06.2024 showing the old address of defendant as mentioned in the rental agreement knowing that he has shifted his business to a new address which is in the very next street. The defendant has not received any summons from this Court in the main suit and he came to know about the exparte decree only upon information passed by his office bearer about receipt of notice in E.P. No.13 of 2026 in February 2026 and since he was not in station at that time, he could not contact his advocate to take steps. The wrong mentioning of correct address of defendant in the plaint would show the mala fide intention of the plaintiff. Therefore, the petitioner has filed this application within 30 days from the date of his knowledge to set aside the exparte decree.

2. The 4th Respondent has filed Counter affidavit for himself and on behalf of the all the Respondents. At this juncture, I should advise the respondents to give some line space and increase font size in pleadings in future to enable the court to read the pleadings without headache.

The averments of the counter affidavit are shortly as follows:

3. The petitioner has received summons in the suit through his office bearer and was therefore fully aware of pendency of the proceedings. If summons have not been duly served, this Court would have directed fresh service or ordered substituted service by publication. In such circumstances, the application to set aside the exparte decree without an application to condone the delay is not maintainable. The parties to the suit have been litigating for over a decade and the defendant is a seasoned litigant. The present suit has arisen subsequent to eviction order passed in RLTOP No. 782 of 2021 wherein the name of the petitioner was mentioned as K.V.Mohgandass. Without objecting to mentioning of his name as aforementioned, he has participated in all the proceedings. Only after an order was passed to break open and police aid, the defendant came forward to hand over keys and the execution petition was terminated on 05.08.2024. Therefore, at the time of handing over of keys on 05.08.2024, the defendant was residing in the rented premises. The suit was e-filed on 23.05.2024. Therefore the address mentioned in the rent agreement was shown in the cause title in the suit. The e-courts records dated 17.10.2024 would disclose that summons was served on the defendant. The defendant has not disclosed the name of office bearer who is alleged to have received the summons. In the technological era, had the defendant gone out of Chennai, he ought to have informed his counsel to make his appearance on behalf of the defendant. Only after filing of E.P seeking for arrest of judgment debtor, the defendant has chosen to initiate the present proceedings. The Respondents

became aware of address of the petitioner only in the course of filing the Execution Petition. Therefore, the petition is liable to be dismissed.

The point for consideration in this application is

4. Whether there is sufficient cause to set aside the exparte decree and it is liable to be set aside?

5. Heard the counsel for the Petitioner. When the application was taken up for enquiry on 15.04.2026, the counsel for Respondents did not argue this application. Therefore, this Court reserved the application for orders giving liberty to the parties to file written arguments before passing orders.

I have gone through the materials available on record.

6. Admittedly the plaintiffs have filed the main suit for relief of recovery of arrears of rent and damages for use and occupation with interest at the rate of 18% per annum. This Court passed exparte decree on 13.11.2024 directing the defendant to pay a sum of Rs.19,06,850/- with interest at the rate of 9% per annum. Only after filing of Execution Petition, the defendant has rushed to the Court to set aside the exparte decree on the allegation that suit summon was not served on the defendant.

I have carefully perused the summons sent by this Court. Notice in I.A.No.3 of 2024 filed by the plaintiff for attachment before judgment was served on the office bearer of defendant on 09.10.2024. On the same day, the

suit summon was served on the defendant in person and he has put his signature with seal. The signature found in the suit summons is compared with signature found in the affidavit filed in support of this application. I could see similarity in both the signatures. It is not the case of the defendant that his signature was forged. Therefore, this Court has duly served the summons on the defendant in person. Even the e-courts diary and notes paper would disclose the same. This Court has noted that summons was served on the defendant and he was called absent and therefore he was set *ex parte*. Thereafter, this Court passed an *ex parte* decree on 13.11.2024.

7. Therefore the defendant has filed application with false affidavit that suit summon was not served on him and notice alone was served that too on office bearer of defendant in execution petition. Therefore, this application is not maintainable without an application to condone the delay in taking steps to set aside the *ex parte* decree within 30 days from 13.11.2024. The reason assigned by the defendant for his non appearance in the main suit is false and further more at the time of filing of the main suit, the defendant was running his business in the rented premises. Therefore, there is nothing wrong in mentioning the old address of the defendant in the plaint. Even if it is assumed that for the sake of argument that the address of the defendant was wrongly mentioned in the plaint, the summon was served. There is no merits in this application. After initiation of execution proceedings, the petitioner has filed this application in order to stall the Execution proceedings.

In the result, this Petition is dismissed with cost of Respondents.

Dictated by me to the Steno-Typist, typed by him directly in the computer, corrected and pronounced by me in the open court, this 4th day of June 2026.

GANAPATHI
SAMY

Digitally signed by
GANAPATHI SAMY
Date: 2026.06.04
16:56:35 +0530

Principal Judge
Principal Commercial Court
Egmore, Chennai.

Draft/ Fair Order in

I.A.No.4 of 2026

in

C.O.S.No. 249 /2024

Date: 04.06.2026

Principal Commercial Court,
Egmore, Chennai.