



WEB COPY



CRP No. 5355 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2026

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

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1. Kanchan Devi
W/O. G.Champalal, No.20, Strotten Muthia
Mudalai Street, Chennai - 600079. and 5
Others

2.Kamala Devi
S/o. B. Babulal, Res. at No.20, Strotten
Muthiamadalai Street, Chennai-079.

3.Dinesh Kumar
S/o. B. Babulal, Res. at No.20, Strotten
Muthiamadalai Street, Chennai-079.
Dharmendra Kumar (Died)

4.Sunitha Devi
W/O. Dharmendra Kumar, Res. at No.20,
Strotten Muthiamadalai Street,
Chennai-079.

5.Kushi Dc Jain
D/o. Late Dharmendra Kumar, Res. at
No.20, Strotten Muthiamadalai Street,
Chennai-079.

6.Ariyan Dc Jain
S/o. Late Dharmendra Kumar, Res. at
No.20, Strotten Muthiamadalai Street,
Chennai-079.

Petitioner(s)



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Vs

1. D.Venkatesan

S/o. T.Babu Rao Bai, Res. at NO.85A,
Mowbrays Road, Alwarpet, Chennai -
600018.

2.B. Ashok Kumar

S/o. Dharmichand Jain, Res. at No.53,
Padavattamman Koil Street, Kosapet,
Chennai - 012.

3.S. Ramesh Kumar

S/o. L. Suganchand Jain, Res. at No.14,
Krishna Iyer Street, Chennai - 079.

4.D. Dharamchand Jain

S/o. Late P. Devaraj Jain, Res. at No.8,
Thanikachalam Steret, Chennai - 017.

5.Jumber Bai

W/o. Jeetmal Jain, Res. at No.2, Muniappan
Street, Chennai - 001.

Respondent(s)

Revision filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 20.08.2025 passed in E.A.No.2 of 2025 in EP No.2866 of 2006 by the learned X Assistant Judge, City Civil Court, Chennai.

For Petitioner(s): M/s. R. Abdul Mubeen

For Respondent(s): No appearance



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ORDER

WEB COPY Heard the learned counsel for the petitioners. Despite service of notice and names of the respondents also being printed in today's cause list, they have not chosen to appear either in person or through counsel.

2. The petitioners are the decree holders in EP No.2866 of 2006 on the file of X Assistant City Civil Court, Chennai. The petitioners filed EP No.2866 of 2006 for executing the decree in O.S.No.5337 of 1996. The said suit was filed for Specific Performance of an agreement of sale. The said execution petition was at the stage of filing of a draft sale deed. For non-compliance of the order of the executing Court, the execution petition itself came to be dismissed for non-prosecution. Thereafter, applications were taken out by the petitioners seeking condonation of delay of 1906 days in filing the application to set aside the order of dismissal of execution petition and also to restore the execution petition to file.

3. Both these applications were taken up together and numbered as E.A.Nos.1 and 2 of 2025 respectively and E.A.No.2 of 2025 was filed seeking condonation of delay of 1906 days in filing the application to set aside the order of dismissal of execution petition and E.A.No.1 of 2025 was filed seeking to restore the execution



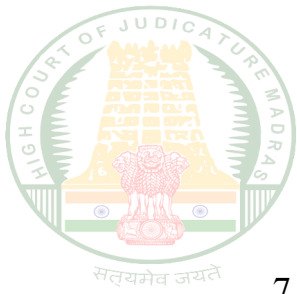
petition to file.

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4. It is relevant to note that the respondents remained exparte even in the said execution applications and did not even appear and contest the applications.

5. Mr.R.Abdul Mubeen, learned counsel for the petitioners submits that having obtained a decree for Specific Performance the petitioners diligently filed E.P.No.2866 of 2006 without any undue delay and were diligently prosecuting the matter through their counsel who was then aged and also suffering from Cancer. It is also an admitted fact that the said Counsel Mr.Madan Chand Chopda passed away in the interregnum period and hence the Draft Sale Deed could not be filed as directed by the executing Court.

6. It is the specific case of the petitioners that the 1st petitioner has filed an affidavit stating that she is a senior citizen and she is also suffering from Cancer and has very poor eye sight and she is not in a position to diligently follow up the execution petition on her side. However, the fact remains that the execution petition was filed only on the ground of failure to file the draft sale deed, which is ordinarily the duty of the counsel appearing for the petitioners/decreed holders.



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7. The delay has been sufficiently explained by the petitioners. Unfortunately, the executing Court added a technical dimension to contend that the explanation for the long range of delay cannot be condoned and that the reasons are not satisfactory. The executing court has also held that the discretionary powers should not be used arbitrarily but wisely and only upon reasonable cause adduced.

8. It is not the length of the delay, but the explanation which matters. Unfortunately, the executing Court has non-suited the petitioners being carried away by the length of the delay of 1906 days.

9. From the above facts, when it is shown that the counsel for the petitioners was suffering from Cancer and not attending courts and also died subsequently, I do not see this as a better ground for making out sufficient cause for non-filing of the draft sale deed pursuant to the decree obtained by the petitioners.

10. I find that the present revision challenges only the order dismissing the condone delay application in E.A.No.2 of 2025. Unfortunately, the executing Court has proceeded to number even the restoration application which can be taken up only



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consequent to the condonation petition being allowed. However, common order has been passed both in the Section 5 application E.A.No.2 of 2025 as well as the application to restore the execution petition to file in EA No.1 of 2025. Such practice adopted by the trial Court is clearly improper and though there has been a common order in E.A.Nos.1 and 2 of 2025, having set aside the order passed in E.A.No.2 of 2025, and condoned the delay in taking out the application, I am inclined to reopen E.A.No.1 of 2025 for enquiry. The executing Court shall issue fresh notice to the respondents/judgment debtors in E.A.No.1 of 2025 and thereafter, decide the same on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

11. In the result, the civil revision petition is allowed. No costs.

07.07.2026

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Index:yes/no

Website:yes/no

Speaking Order/Non-speaking Order

To

The X Assisstant City Civil Court, Chennai

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