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**C.R.P. No.776 of 2022**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 10.03.2025

CORAM

**THE HONOURABLE Mr. JUSTICE P.DHANABAL**

**C.R.P. No.776 of 2022**

**and C.M.P. No.3893 of 2022**

Perumal S/o.Kaveri

...Petitioner / Petitioner / Judgment Debtor /  
Defendant

Vs.

Chinnasamy S/o. Kandhan

..... Respondent / Respondent / Decree  
Holder / Plaintiff.

**PRAYER:** Civil Revision Petition is filed under section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 17.09.2021 made in R.E.A. No.11 of 2021 in R.E.P. No.29 of 2017 in O.S. No.282 of 2014 on the file of the Sub Court, Palacode.

For Petitioner : Mr. K. Venkateswaran

For Respondent : Mr. V.R. Annagandhi

**ORDER**

The Civil Revision Petition has been filed by the petitioner to set aside the fair and decreetal order dated 17.09.2021 made in R.E.A. No.11 of 2021



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in R.E.P. No.29 of 2017 in O.S. No.282 of 2014 on the file of the Sub Court, Palacode., wherein the petitioner filed a petition to stay proceedings under Order XXI Rule 26 of Civil Procedure Code and the same was dismissed by the trial Court. Against which, the present civil revision petition is preferred by the petitioner.

2. The learned counsel appearing for the petitioner would submit that the petitioner already filed a petition to condone delay in setting aside the exparte decree under Section 5 of Limitation Act and the same is pending. While pendency of the said petition, the respondent tried to execute the decree. Therefore, the petitioner filed a petition before the trial Court to stay the proceedings but the same was dismissed Without considering the reasons stated in the stay petition and without disposing the condone delay petition filed under Section 5 of the Limitation Act the trial Court taking steps the execute the decree. The petition to condone delay in filing the exparte decree set aside is pending for adjudication. Therefore, the execution proceedings have to be stayed and therefore, the order passed by the Trial Court is liable to be set aside.

3. The learned counsel appearing for the respondent would contend



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that already the Suit has been decreed exparte. Thereafter, a petition has been filed to execute the decree. Now the case is posted for execution of decree and the same is pending. While so, only in order to harass the respondent and in order to delay the execution proceedings, the petitioner has filed the petition. Moreover, Order XXI Rule 26 will not be applicable to the present case. Therefore, the trial Court has passed a reasoned order and hence the present civil revision petition is liable to be dismissed.

4. Heard both sides and perused all the materials available on record.

5. The grievance of the petitioner is that without disposing the Section 5 of Limitation Act, application to condone delay in filing the exparte decree set aside petition, if the decree is executed, then the purpose of filing the petition would be defeated. Therefore, the petition to condone delay in filing the exparte decree set aside petition has to be disposed of, before passing order in execution petition. The learned counsel appearing for the respondent also admitted that pendency of the petition and the stage of the Execution Petitions.

6. Therefore, without going into the merits of the petition and



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considering the facts and circumstances of the case, this Court is inclined to direct the trial Court to dispose of the Section 5 of the Limitation Act application filed by the petitioner, before passing orders in the main execution petition.

7. Accordingly, the Civil Revision Petition is **disposed of by directing the trial Court to dispose of the Section 5 of Limitation Act application pending in I.A. No.249 of 2020 pending of the file of the Sub Court, Palacode within 2 months from the date of this order and thereafter decide the main Execution Petition.** Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No  
Speaking order/non-speaking order  
mjs

To

The Sub Court, Palacode.



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**P.DHANABAL, J.,**

mjs

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