



C.R.P.No.1365 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 01.07.2025**

CORAM :

**THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR**

**C.R.P.No.1365 of 2019**

Mishra Dhatu Nigam Limited,  
Represented by its Additional General Manager (Mktg)  
Y.V.Hanumanth Rao,  
having office at Kanchanbagh,  
Hyderabad – 500 058.

... Petitioner

Vs.

M/s.Techno Futura International Limited,  
Presently known as Tantanium Products Limited,  
Represented by its Chairman,  
Having office at New No.10, Old No.947,  
Sorrento House, P.H. Road,  
Chennai – 600 084.

... Respondent

**Prayer** : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 17.12.2018 in E.A.No.246 of 2017 in E.P.No.181 of 2003 on the file of the Subordinate Court, Tambaram.

For Petitioner : Mr.N.Nithianandam

Respondent : Left



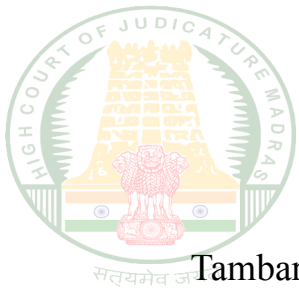
C.R.P.No.1365 of 2019

## **ORDER**

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Challenging the order of the Subordinate Judge, Tambaram, dated 17.12.2018, in E.A.No.246 of 2017 in E.P.No.181 of 2003, dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 2599 days in filing the application to set aside the order of dismissal of default passed in E.P.No.181 of 2003, dated 15.12.2010, the present revision has been filed.

2.The petitioner has filed the Execution Petition in E.P.No.181 of 2003 for attachment of properties, pursuant to the decree dated 22.11.2000 in O.S.No.442 of 1999 on the file of the IX Additional Chief Judge, Fast Track Court, Hyderabad. It is the case of the petitioner that the Execution Court ordered attachment of properties of respondent Company on 12.07.2005. However, when the Court Amin visited the petition mentioned premises, it was found that the respondent had shifted their company from the place. Hence, the attachment could not be made. Thereafter, the petitioner took out an application in E.A.No.311 of 2006 on the file of Subordinate Court, Chengalpattu, for amendment of Execution Petition. Thereafter, the Execution Petition was transferred to Subordinate Court,



C.R.P.No.1365 of 2019

WEB COPY

Tambaram, and the Execution Application was re-numbered as E.A.No.109 of 2009. However, since the Deputy General Manager of the petitioner Company retired from the Company and subsequently, no officer was posted at Chennai, the petitioner was not in a position to follow up the case. After verification of records, the petitioner came to know about the dismissal of the Execution Petition, only on 04.06.2015. Thereafter, the petitioner has filed the present application in E.A.No.246 of 2017 to condone the delay of 2599 days in filing an application to set aside the order of dismissal passed in E.P.No.181 of 2013 on 15.02.2010.

3.The Execution Court dismissed the said application by impugned order dated 17.12.2018 on the ground that the petitioner failed to adduce satisfactory reasons for each and every day's delay. Challenging the same, the present revision has been filed.

4.Learned counsel for the petitioner would submit that the petitioner is a public sector undertaking, dealing with public money and the delay was not wholly attributable to the petitioner alone, but there was some lapses on the part of the counsel also. It is his contention that the Execution Court



C.R.P.No.1365 of 2019

ought to have allowed the application in the interest of justice.

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5.I have perused the entire materials available on record.

6.Before adverting to the merits of the case, this Court, at the outset, is of the view that the application itself is not maintainable. The present application is filed under Section 5 of the Limitation Act to condone the delay in filing an application to set aside the order dismissing the Execution Petition for default. As per Order XXI Rule 106(3) CPC, an application to set aside the order dismissing the Execution Petition for default, has to be filed strictly within a period of thirty days from the date of the order. The provisions of Section 5 of the Limitation Act to condone the delay in filing such application, cannot be applied in execution proceedings. This Court, in recent judgment in *Sundarammal and others v. Kanagaraj and another* [C.R.P.Nos.808 & 809 of 2025, dated 26.06.2025], has dealt with the issue in extenso and has held as follows :

***“50.Hence, in the light of the above discussion, this Court is of the view that the proviso introduced to Order 21 Rule 105 CPC by Madras Amendment, 1972, has been repealed by virtue of Section 97 of the Amending Act.***



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*51. However, this Court is conscious of the fact that parties should not suffer due to the negligence on the part of their counsel in not following the cases properly. The High Court can exercise its powers under Section 122 CPC to set out its own procedure; to make rules regulating their own procedure for the Civil Courts under its jurisdiction; and to bring in amendment to the Rules in the First Schedule of Code of Civil Procedure. As the proviso to Rule 105 of Order 21 CPC, brought in by the Madras High Court Amendment, 1972, providing powers to the Courts to condone the delay in execution proceedings, has been repealed after the Central Amendment, 1976, this Court is of the view that, it is for the High Court, on the administrative side, to consider re-introducing the proviso on similar lines and placing the same below Order 21 Rule 106(3) of the present Code. However, till such an amendment is brought under the First Schedule, the provisions under Order 21 Rule 106(3) CPC as of now, alone would prevail and the Execution Court has no power to condone the delay in execution proceedings under Order 21 CPC, after expiry of the statutory period of limitation.”*

*(emphasis supplied)*

7. In view of the above judgment, the present application filed under

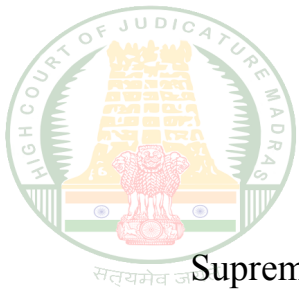


C.R.P.No.1365 of 2019

Section 5 of the Limitation Act to condone the delay in filing an application to set aside, in execution proceedings, has to fail.

8. Even on merits, the only reason given by the petitioner for the delay is that they were not aware of the transfer of the Execution Petition and they came to know about the dismissal only on 04.06.2015. However, the Execution Court has found from records that, even after the transfer of E.P., when the Execution Application in E.A.No.109 of 2019 was posted for enquiry on 07.12.2009, both the counsel were present on that day and at their request, the matter was adjourned to 11.01.2010. Therefore, it is clear that the petitioner had the knowledge of transfer of E.P. as early as on 07.12.2009. Further, the Execution Court has recorded a finding that, despite pleading the date of knowledge as 07.12.2009, the affidavit has been prepared much earlier on 29.04.2015, which itself, falsifies the case of the petitioner.

9. Be that as it may, it has been consistently held by the Hon'ble



C.R.P.No.1365 of 2019

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Supreme Court that the delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The Hon'ble Supreme Court has also been consistently reiterating that the Court must consider the reason for the delay rather than the duration of the delay. The discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. In ***Ramlal vs. Rewa Coal Fields Ltds***, reported in ***AIR 1962 SC 361***, the Hon'ble Supreme Court has held that, once the period of limitation expires, then the applicant has to explain the delay made thereafter for day by day and if he is unable to explain the delay even for a single day delay, it would be deemed that the party did not have sufficient cause for delay.

10.It appears that the entire blame has been thrown on the head of the advocates who were appearing for the revision petitioner before the Execution Court. Even if this Court assumes for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay, as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings. The litigant, therefore, should not be permitted to



C.R.P.No.1365 of 2019

throw the entire blame on the head of the advocate and thereby, disown him at any time and seek relief. Therefore, even on merits, the application has to fail.

11. Therefore, this Civil Revision Petition is dismissed. No costs.

**01.07.2025**

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

1. The Subordinate Judge,  
Tambaram.

2. The Section Officer,  
VR Section,  
High Court, Madras.

**N. SATHISH KUMAR, J.**

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C.R.P.No.1365 of 2019

**C.R.P.No.1365 of 2019**

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