



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 30.10.2025

Order pronounced on : 14.11.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.3131 of 2023

& CMP.No.19396 of 2023

Bagyalakshmi

... Petitioner

Vs.

M/s.Shriram Transport Finance Company Ltd.,
No.93K5, First Floor,
Karnataka Bank, Upstairs,
Tiruppur,
Rep. by its authorised representative/Power Agent
J.Sankar Pandi

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order dated 26.04.2023 passed in E.A.SR.No.1992 of 2023 in E.P.No.24 of 2022 on the file of the I Additional District Judge, Tiruppur.

For Petitioner : Mr.R.Ragavendran

For Respondent : Mrs.V.Pushpa



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ORDER

The judgement debtor is the revision petitioner. The judgement debtor filed an application for condonation of delay in setting aside the ex-parte order. The said application came to be returned as not maintainable as an earlier application under Order XXI, Rule 106 of CPC in E.A.No.1 of 2023 in the very same Execution Petition has been dismissed. Challenging the said docket order, the judgment debtor is before this Court.

2.I have heard Mr.Ragavendran, learned counsel for the revision petitioner and Mrs.Pushpa, learned counsel for the respondent/decreed holder.

3.The learned counsel for the revision petitioner would submit that the Trial Court erred in refusing to number the application and holding it to be not maintainable, on account of dismissal of E.A.No.1 of 2023, when the case of the petitioner was only E.A.No.1 of 2023 that had been dismissed, was filed to set aside the ex-parte order passed on 15.09.2022 and it was



dismissed only on the ground that the said application was filed after 30 days from the date of ex-parte order and hence not maintainable. It is therefore the contention of the learned counsel for the petitioner that the present application was filed for condonation of delay in order to cure the defect in filing E.A.No.1 of 2023. In such circumstances, according to the learned counsel for the petitioner, the Executing Court ought not to have put dismissal of E.A.No.1 of 2023 against the revision petitioner and dismissed even the condonation of delay application as not maintainable. He would further state that the Executing Court has power to condone the delay under Order XXI Rule 105(3) CPC and hence, the Executing Court has committed an error which requires interference in revision.

4.In support of his contentions, the learned counsel for the petitioner relies on the decision of this Court in *T.Natarajan Vs. Tejraj and another*, in *CRP.Nos.1457 & 1458 of 2018* dated 28.10.2020, where this Court held that Order XXI, Rule 106(4) of CPC as inserted by Madras High Court in exercise of powers under Section 122 of CPC, enables the parties to file an application under Section 5 of the Limitation Act, 1963 and seek



condonation of delay in seeking to set aside the ex-parte order passed under Order XXI, Rule 106 (1) of CPC. Relying on the ratio laid down by this Court in *N.Rajendran Vs. Sriram Chits Tamil Nadu Private Limited, 2011 (6) CTC 268*, this Court held that an application for condonation of delay is maintainable. The learned counsel for the petitioner therefore prays for the revision being allowed.

5.Per contra, Mrs.Pushpa, learned counsel for the respondent would submit that in a recent decision of this Court in *Sundarambal and others Vs. Kanagaraj and others*, reported in 2025 (4) CTC 225, after discussing the entire case law on the field, pertaining to the power of the Executing Court to condone delay in filing applications under Order XXI, Rule 106 of CPC, held that the ratio laid down by this Court initially in *Rajendran's case* referred herein supra and subsequently followed by several other Judges, is contrary to the ratio laid down by the Hon'ble Supreme Court in *Pankajakshi Deceased through LRs and others Vs. Chandrika and others, 2016(6) SCC 157*, where it has been held that any amendment inserted in the Code of Civil Procedure, which is inconsistent with the Central Act



stands repealed and this Court finding that the amendment inserted by this Court, permitting the Courts to condone the delay was inconsistent to Order XXI, Rule 106(3) of the Central Act, proceeded to hold that the amendment would stand automatically repealed in terms of Section 97 of the Amendment Act.

6. In the said decision, this Court also held that the parties should not suffer due to negligence on the part of their counsel in not following the cases properly and recommended that the High Court, on the administrative side, should reconsider the issue and till such time the amendment is brought under the First Schedule, held that the provisions under Order XXI Rule 106(3) CPC alone would prevail and that the Executing Court has no power to condone the delay, after the expiry of the statutory period of limitation.

7. This Court also in order to protect the litigants where there has been no appearance on the date when the case was called for hearing and the party aggrieved, or the counsel who either reports no instruction or



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continuously remains absent, then the Court must ensure fresh notice is issued to the parties giving them reasonable time to make alternate arrangements to appear and only if after such notice also, the party does not appear, then the Court may proceed to pass an order under Order XXI, Rule 105 (2) CPC. This Court also clarified that if the matter is dismissed on a date not fixed for hearing, but on a date fixed for some other purpose, then the order will not come within the ambit of Order XXI, Rule 105(2) CPC and further clarified that any order passed under Order XXI, Rule 105(2) CPC is an order of dismissal for non appearance and not for any other reasons.

8.However testing the facts in the light of the above decision, there is no negligence on the part of the counsel. Even according to the revision petitioner, the only reason given by the revision petitioner is that despite having appeared in the Execution Petition, he has not been able to contact his counsel to instruct him to prepare counter which resulted in the ex-parte order being passed. In such circumstances, the application for condonation of delay is not maintainable, as held by this Court in *Sundarammal's case*,



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(referred herein supra), and the executing Court has rightly dismissed the application as not maintainable and the same does not call for interference in revision.

9.In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

14.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
rkp

To
The I Additional District Judge, Tiruppur.



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P.B. BALAJI,J.

rkp/ata

Pre-delivery order made in
CRP.No.3131 of 2023
& CMP.No.19396 of 2023

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