



C.R.P.Nos.3011 & 3009 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.Nos.3011 & 3009 of 2025

and

C.M.P.No.16898 of 2025

N.Iyyappan

... Petitioner
in both petitions

Vs.

Reliance General Insurance Co. Ltd.,
Represented by Authorisation Officer,
Chennai.

... Respondent
in both petitions

Prayer in C.R.P.No.3011 of 2025 : Civil Revision Petition filed Article 227 of the Constitution of India against the order dated 17.06.2025 in E.A.No.1 of 2025 in E.P.No.11 of 2020 in M.C.O.P.No.149 of 2009 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Vellore.

Prayer in C.R.P.No.3009 of 2025 : Civil Revision Petition filed Article 227 of the Constitution of India against the order dated 17.06.2025 in E.A.No.2 of 2025 in E.P.No.11 of 2020 in M.C.O.P.No.149 of 2009 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Vellore.



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For Petitioner : Mr.B.Baskar
in both petitions

COMMON ORDER

Challenging the order of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Vellore, dated 17.06.2025, in E.A.No.1 of 2025 in E.P.No.11 of 2020 in M.C.O.P.No.149 of 2009, dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 1169 days in filing the application to set aside *ex parte* order dated 21.02.2022 passed in E.P.No.11 of 2020, C.R.P.No.3011 of 2025 has been filed.

2.Challenging the order of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Vellore, dated 17.06.2025, in E.A.No.2 of 2025 in E.P.No.11 of 2020 in M.C.O.P.No.149 of 2009, dismissing the application under Order XXI Rule 106 CPC to set aside *ex parte* order passed against the petitioner in E.P.No.11 of 2020, C.R.P.No.3009 of 2025 has been filed.

3.The respondent/deedee holder has filed the Execution Petition in E.P.No.11 of 2020 for realisation of the amount awarded by the Motor



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Accident Claims Tribunal in M.C.O.P.No.149 of 2009. The petitioner/judgment debtor has been set *ex parte* in the execution proceedings on 21.02.2022. Thereafter, the petitioner has filed the present applications, one to condone the delay of 1169 days in filing an application to set aside the *ex parte* order; and another to set aside the *ex parte* order.

4.The Execution Court dismissed both the applications by orders dated 17.06.2025 on the ground that the petitioner, having knowledge about the proceedings, had failed to file counter in time and failed to explain each day's delay. Challenging the same, the present revision petitions have been filed.

5.Learned counsel for the petitioner would submit that the petitioner became ill and was not able to engage a counsel and hence, he was set *ex parte*. Further, the learned counsel would submit that the petitioner has a valid defence in the claim proceedings, as he had already sold the vehicle to a third party even before the date of accident.

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

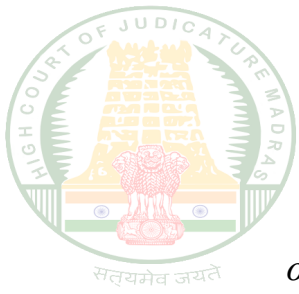


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7. Before advertg to the merits of the case, this Court, at the outset, is of the view that the application itself is not maintainable. The present application is filed under Section 5 of the Limitation Act to condone the delay in filing an application to set aside the *ex parte* order in the Execution Petition. As per Order XXI Rule 106(3) CPC, an application to set aside the *ex parte* order 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, recently, has dealt with the issue in extenso in ***Sundarammal and others v. Kanagaraj and another*** reported in 2025 (3) ***LW 502***, 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.

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



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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)

8. In view of the above judgment, the present application filed under Section 5 of the Limitation Act to condone the delay in filing an application to set aside the *ex parte* order in execution proceedings, cannot be entertained.



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9. Even on merits, it is relevant to note that the petitioner has, in fact, appeared through his counsel in the execution proceedings. Despite several opportunities being given for filing counter, the petitioner has not filed his counter. Thereafter, the petitioner has changed his counsel and once again, despite several opportunities, the petitioner has not filed his counter in execution proceedings. Therefore, the contention of the petitioner that he could not engage a counsel due to his ill health, has no legs to stand. Insofar as the contention of the petitioner that he had already sold the lorry to a third party as early as on 29.10.2007 even before the accident took place on 15.11.2008, it is relevant to note that the Insurance Certificate enclosed by the petitioner in his own typed set of papers indicates that the policy stands in the name of the petitioner on the date of the accident. If the petitioner had a valid defence, nothing prevented him contesting the execution proceedings, however, the petitioner has remained *ex parte* both in main claim petition as well as execution proceedings and only when arrest warrant was issued, he has come forward with these applications. Therefore, even on merits, the application has to fail.



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10. Accordingly, this Civil Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Vellore.

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



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N. SATHISH KUMAR, J.

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