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CRP No. 4897 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-12-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 4897 of 2025

and

CMP No. 24729 of 2025

A.B.S.Engineers
Having office at,
No. 32, New Street, Cholapuram,
S.M.Nagar, Chennai 600 062.

Petitioner(s)

Vs.

1. Kalyani
W/o. Vinayagam,
Res. at Pasumathur Village and Post,
Katpadi Taluk, Vellore District.
Now Res. at Sedukkarai, Gudiyatham,
Vellore District.

2.Kalaivani
D/o. Late Vinayagam,
Res. at Pasumathur Village and Post,
Katpadi Taluk, Vellore District.
Now Res. at Sedukkarai, Gudiyatham,
Vellore District.

Kalaiselvam(Died)

3.Kalaimathi
D/o.Late Vinayagam,
Res. at Pasumathur Village and Post,
Katpadi Taluk, Vellore District.
Now Res. at Sedukkarai, Gudiyatham,
Vellore District.



4. The Branch Manager
Oriental Insurance Company Limited,
Office at Katpadi Road, Gudiyatham,
Vellore District.

Respondent(s)

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside Fair and Decretal order dated 02.08.2025 in EA No. 1 of 2025 in EP No. 959 of 2023 on the file of Subordinate Judge, Ambattur.

For Petitioner(s): Mr.K.V.Muthu Visakan

For Respondent(s): Mr.B.S.Sundaramoorthi For R1
to R3
No appearance for R4

ORDER

This Civil Revision Petition is taken up for final disposal with the consent of the learned counsel for the parties.

2. The learned counsel for the petitioner submits that the petitioner is the first judgment debtor. The vehicle belonging to the petitioner was involved in an accident. According to the learned counsel for the petitioner, on the date of accident, the vehicle was validly insured with the 4th respondent/Insurance Company. However, behind the back of the petitioner, according to the learned counsel for the petitioner, though initially pay and recovery was ordered by the Tribunal, subsequently, the order was modified and the petitioner has been



directed to pay the award amount. The petitioner, on coming to know of the *ex parte* award has filed an application to condone the delay in setting aside the *ex parte* award passed against him. The said application was dismissed for non-prosecution and within time, an application has been taken out to restore the Section 5 application. In this background, the petitioner has moved an application under Order XXI Rule 26 of CPC, seeking stay of the proceedings before the Executing Court. The Executing Court has dismissed the said application, finding that the decree has not been stayed, despite the award having been passed on 09.02.2016.

3. The learned counsel for the respondents 1 to 3 would oppose the revision, on the ground that there is no infirmity in the order of the Executing Court, as admittedly there is no stay by any Superior Court or even by the trial Court in the application to set aside the *ex parte* award. Therefore, he prayed for dismissal of the revision petition.

4. I have considered the submissions made by the learned counsel on either side and also gone through the order of the Executing Court.

5. In my considered opinion, the Executing Court has rightly dismissed the application under Order XXI Rule 26 of C.P.C. However, considering the



fact that the petitioner, was not put on notice when the award came to be modified, after initially directing pay and recovery and subsequently directing the petitioner to pay the entire award amount and also taking into account the fact that the award amount is Rs.7,24,000/-, payable with interest at 7.5% per annum from the date of the claim petition, in order to give a fair opportunity to the petitioner, I am inclined to allow the revision in the following terms:

(i) The petitioner shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) to the credit of M.C.O.P.No.28 of 2011 on the file of Sub Court, Gudiyatham, within a period of four (4) weeks from the date of receipt of a copy of this order.

(ii) Subject to the deposit of the said amount as stated above, the application to restore the condone delay application shall be allowed and the Sub Court, Gudiyatham, shall decide the condone delay application pending in I.A.No.1 of 2024 in M.C.O.P.No.24 of 2011, as expeditiously as possibly on merits and in accordance with law, within a period of four weeks thereafter.

(iii) Subject to the result of the condone delay application, the parties are at liberty to work out the respective rights with regard to the amount deposited by the petitioner.

(iv) Till the disposal of the Section 5 application, the proceedings of the



Execution Petition shall stand deferred.

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(v) No costs. Consequently, connected Miscellaneous Petition is closed.

17-12-2025

Jd

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Subordinate Court, Gudiyatham.

2. The Branch Manager,

Oriental Insurance Company Limited,

Office at Katpadi Road, Gudiyatham, Vellore District.



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P.B.BALAJI J.
jd

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