



CRP No. 395 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-02-2026

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

**CRP No. 395 of 2024
and CMP No.1890 of 2024**

1. Dhanabakkiyammal @ Dhanabakkiyam
W/o Late Munusamy Reddiar, Reddy St,
Panapakkam Village, Palavakkam Post,
Uthukottai (Via). Uthukottai Tk, Tiruvallur
Dt

Petitioner(s)

Vs

1. C.Kotteaswara Reddy
S/o Late Duraisamy Reddy, Seenikuppam
Village, Palavakkam Post, Uthukottai Tk,
Tiruvallur Dt

Respondent(s)

For Petitioner(s): Mr. G.Jermiah

For Respondent(s): Mr. S.Sathish

ORDER

Heard Mr.G.Jermiah, learned counsel for the petitioner and Mr.S.Sathish,
learned counsel for the respondent.

2. The plaintiff in O.S.No.111 of 2021 before the learned I Additional District
and Sessions Judge, Tiruvallur is the revision petitioner, aggrieved by the order of the



CRP No. 395 of 2024

trial Court allowing the application to condone the delay of 94 days in filing the application to set aside the exparte decree under Order IX Rule 13 of Civil Procedure Code.

3. Learned counsel for the petitioner would state that the respondent had come to Court with a false affidavit and the Court having given a finding that the petitioner has not made out sufficient cause, ought not to have condoned the delay. He would therefore pray for the revision being allowed.

4. Per contra, learned counsel for the respondent would contend that the respondent has already complied with the conditional order by depositing Rs.1,00,000/- (Rupees One Lakh only) and would further contend that even in the written statement, it is the case of the respondent/defendant that a sum of Rs.95,000/- was due and payable to the plaintiff and the said amount is also now secured by depositing of the same in compliance of the order of the learned I Additional District and Sessions Judge, Tiruvallur and therefore, he would pray for dismissal of the revision.

5. I have carefully considered the submissions advanced by either side.



CRP No. 395 of 2024

WEB COPY

6. The petitioner has filed a suit for recovery of a sum of Rs.11,59,000/- as on the date of filing of the suit. The respondent was set exparte and he has filed an application under Order IX Rule 13 of Civil Procedure Code to set aside the exparte order along with an application under Section 5 of Limitation Act to condone the delay of 94 days. The trial Court, having found that the respondent has admitted the liability to the tune of Rs.95,000/- has proceeded to allow the application and imposed a condition to deposit a sum of Rs.1,00,000/-(Rupees One Lakh only) to the credit of O.S.No.111 of 2021. The said condition has also been complied with admittedly and now the application to set aside the exparte decree under Order IX Rule 13 of Civil Procedure Code is pending. As this Court has granted stay in the above revision at the request of the plaintiff, the setting aside application has not been taken up ever since. However, on the contrary, it is contended by the learned counsel for the respondent that the execution petition has been proceeded with and it is at the stage of sale papers. Learned counsel would state that the respondent is willing to comply with any further reasonable condition that may be imposed and would co-operate for day-today trial and expeditious disposal of the suit as the respondent has made out sufficient defence,

7. The trial court has thought it fit to exercise discretion to condone the delay



of 94 days and at the same time, in order to protect the interest of the petitioner/plaintiff and also to compensate the prejudice that is caused had directed to deposit a sum of Rs.1,00,000/-(Rupees One Lakh only) which was the amount admitted to be due by the respondent/defendant himself. Therefore, the trial court has exercised discretion. I do not see any reasons whatsoever to interfere that too under Article 227 of the Constitution of India. In fact, I find from the affidavit filed in support of the condone delay application that the petitioner was suffering from jaundice and he was not aware of the exparte decree and that he came to know about the exparte decree only on 09.10.2022 and thereafter, he has contacted his counsel and filed an application.

8. It is the contention of the learned counsel for the petitioner that the petitioner has filed an execution petition in EP No.202 of 2022 and the respondent was served with notice in the execution petition as well and he filed vakalat on 10.10.2022 and thereafter, filed counter in EP No.202 of 2022 on 13.11.2022. It is therefore the submission of the learned counsel for the petitioner that the respondent was fully aware of the proceedings and the delay has not been satisfactorily explained.

9. I find that the respondent's case is in fact consistent with the submissions made by the learned counsel for the petitioner. It is the admitted version of the



CRP No. 395 of 2024

respondent that he had knowledge of the exparte decree only on 09.10.2022. It is around the same time, he received notice in the execution petition and entered appearance on 10.10.2022. No doubt, there has been a delay of one month , thereafter, in taking out an application to set aside the exparte decree and seek condonation of delay. However, the said delay cannot be termed as inordinate or fatal in order to shut out the remedy available to the respondent, more so, when the trial court has exercised discretion to entertain the application by imposing a condition.

10. In the light of the above, I do not see any grounds warranting interference with the discretion exercised by the trial court. At the same time, it is brought to my notice that as both the execution petition as well as the set aside petition are pending, the respondent shall further deposit a sum of Rs.1,00,000/-(Rupees One Lakh Only) within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the setting aside application shall stand allowed and the trial court shall thereafter proceed with the trial which has already commenced and dispose of the suit in O.S.No.111 of 2021 on or before 30.06.2026. The parties shall co-operate for expeditious disposal of the suit without seeking unnecessary adjournments.

11. The proceedings of the execution petition shall be kept in abeyance for the



CRP No. 395 of 2024

P.B.BALAJI.,J

sr

said period of four weeks and in the event of the respondent not making further deposit of Rs.1,00,000/-(Rupees One Lakh Only) within the said period, it is open to the petitioner to proceed with the execution petition. In the event of the deposit being made by the respondent, then the E.P shall be dismissed.

12. The amount of Rs.1,00,000/- together with the proposed amount of Rs.1,00,000/- ordered to be deposited totalling Rs.2,00,000/-(Rupees Two Lakhs Only) shall await the decision in the suit to be paid out to the respective parties.

13. With the above observation, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2026

sr

Index:yes/no

Website:yes/no

Speaking Order/Non-Speaking Order

To

The I Additional District and Sessions Court, Tiruvallur



WEB COPY



CRP No. 395 of 2024

CRP No. 395 of 2024