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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.906 of 2026
and CMP. No.4866 of 2026**

Nagaraj

Petitioner

Vs

1.A/m.Madhava Perumal Thirukoil,
(Represented by its Executive Officer having
its Office at Temple Premises at Mylapore),
Chennai - 600 004.
Ms.J.Ellammal @ Shanthi (deceased)
2.Shanthi
3.Rani
Palani (deceased)

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order and decretal order of the X Assistant City Civil Court of Madras in E.A. No.09 of 2025 in E.P. No.1562 of 2016 in O.S. No.448 of 2008 dated 18.11.2025, is even otherwise illegal, incompetent and irregular.

For Petitioner : M/s.V.Srimathi

For Respondents : Mr.D.Dirshath Raj for
M/s.A.S.Kailasam and Associates



ORDER

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The 5th defendant in OS.No.448 of 2008 is the revision petitioner, challenging the dismissal of an application filed in EA.No. 9 of 2025, dismissing Section 5 application seeking condonation of delay of 2779 days in filing the petition to set aside the ex- parte order dated 18.08.2017 in the Execution Petition.

2. I have heard Mrs.V. Srimathi, learned counsel for the revision petitioner and Mr.D.Dirshath Raj for M/s. A.S. Kailasam and Associates, learned counsel for the first respondent/caveator. I have also gone through the records including the impugned order in the revision petition.

3. The learned counsel for the petitioner, Mrs.Srimathi would state that though the delay appears to be long and inordinate on the face of it. The petitioner had adduced satisfactory reasons for not being able to file the application earlier. She would further state that the suit itself has been filed against a dead person without any orders from the Court and the petitioner was also not served with summons in the suit. She would further point out that only in the Execution Petition, after having been served with notice, the petitioner came to know about the decree passed in the suit. In such circumstances, the delay though is 2779 days, it would not be a matter for concern. The learned



counsel further states that the Executing Court has not even considered the reasons assigned by the petitioner and she would therefore pray for the revision being allowed.

4. Per contra, Mr.D.Dirshath Raj, learned counsel appearing for the respondent, would bring to my notice that the petitioner was the 5th defendant in the suit and as early as on 18.08.2017, before the Executing Court, he was served and taking note of the same, the Executing Court had set him ex-parte and thereafter, posted the matter to 13.10.2017 for steps in respect of other judgment debtors. He would also bring to my notice that on 17.04.2024, the petitioner had entered appearance through Counsel and the vakalat was returned. The Executing Court directed a fresh delivery warrant to be issued and posted the Execution Petition to 13.06.2024. It is therefore the submission of the learned counsel for the first respondent that, the petitioner had full knowledge about the Execution Proceedings and he has sworn to a false affidavit as if he came to know of the ex-parte order only on 27.03.2025.

5. Insofar as the suit having been filed against the dead person, the learned counsel for the first respondent/temple would state that referring to the cause title, the suit was originally filed against Ellammal alias Shanti and after her demise, her legal representatives were brought on record vide order dated 12.02.2009 in I.A.No. 9083 of 2008 and the Court was never informed by any



of the defendants, regarding the death of the first defendant and written statement was filed only along with the condone delay application and in such circumstances, when neither the petitioner nor the other legal heirs had disclosed the factum of the death of the first defendant, it cannot be now put against the first respondent. The learned counsel would therefore state that the Executing Court has rightly dismissed the application.

6. I have carefully considered the submissions advanced by the learned on either side.

7. In the application filed seeking condonation of delay of 2779 days, it is the contention of the petitioner that without even service of summons in the suit an ex-parte decree was obtained and subsequently, E.P.No.1562 of 2016 was filed for recovery of possession, after demolishing the superstructure. According to the petitioner, he is residing in the decretal property and he came to know about the ex-parte order only on 27.03.2025. However, as pointed out by the learned counsel for the first respondent, the ex- parte order was passed on 18.08.2017, only after the Executing Court recorded the fact that the petitioner was served with notice. Even assuming for a moment without conceding that the petitioner's specific case is that the petitioner was not served with notice, even otherwise, at least on 17.04.2024, when the petitioner had entered appearance through Counsel, the petitioner should have been aware of the order



dated 18.08.2017. The application was not filed then and there in April 2024.

However, it was filed close to a year thereafter contending that the petitioner came to know about the ex-parte order only on 27.03.2025. The Court records reveal that the petitioner has sworn to a false affidavit. In fact, even in the affidavit the petitioner does not even disclose as to how he came to know about the ex- parte order on 27.03.2025. Thus, the date is merely invented for the purposes of calculation of delay, considering the timing of the application and clearly an abuse, especially when the petitioner had engaged a Counsel even in April 2024.

8. The Executing Court has also found that the explanation offered is not acceptable and justifiable warranting exercise of discretion to condone delay. In the light of the above, I do not see any merit in the revision petition. In fine, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

24.02.2026

rkp

Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

The Judge, X Assistant City Civil Court, Madras.



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P.B.BALAJI, J.,

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