



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 08.12.2025

Order pronounced on : 09.01.2026

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.5241 of 2025

& CMP.No.26418 of 2025

Padasaib (Died)

... Petitioners

1.Saroja Ammal

2.Rukumani

3.Lakshmi

4.Neelakanthan

Vs.

Saraswathi (Died)

1.Kaliyamurthy

2.Venugopal

3.Ramamurthy

4.Vani

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order passed in E.A.No.37 of 2022 in E.P.No.44 of 2002 on the file of the II Additional District Munsif Court, Puducherry and to dismiss the petition in E.A.No.37 of 2022.



For Petitioners : Mr.T.K.Saravanan

For Respondents : Mr.T.M.Naveen

ORDER

This revision has been filed challenging the order passed in E.A.No.37 of 2022 dated 04.02.2025 in E.P.No.44 of 2002, in and whereby the delay of 573 days in filing the application to restore E.P.No.44 of 2002, has been allowed on payment of costs of Rs.3,000/- to the respondents, that is the revision petitioners.

2.I have heard Mr.T.K.Saravanan, learned counsel for the revision petitioners and Mr.T.M.Naveen, learned counsel for the respondents.

3.It is the contention of the learned counsel for the revision petitioners that the executing Court did not have the power to exercise, in the first place, Section 5 of the Limitation Act, as admittedly the order was passed beyond the period of 30 days, which alone can be condoned under relevant provisions of Order XXI of CPC. He would also rely on the decision of this Court in *R.Rasappan Vs. D.Rajalakshmi*, reported in 2025 SCC Online Mad 4068, where this Court has held that the executing Court cannot entertain an



application under Section 5 of the Limitation Act if it filed beyond the period of 30 days from the date of the order.

4.The learned counsel for the petitioners would also place reliance on the decision of the Division Bench of this Court in *N.M.Natarajan Vs. Deivayanai Ammal and others*, reported in 1989 1 L.W Page 178, where the Hon'ble Division Bench of this Court held that with reference to applications under Section Order XXI of CPC, there is a statutory bar in applying the provisions of Section 5 of the Limitation Act and an application to condone the delay cannot be maintained for setting aside the order passed ex-parte under Rule 106 of Order XXI of CPC. He would also place reliance on the decision of the Hon'ble Supreme Court in *Damodaran Pillai and others Vs. South Indian Bank Limited*, reported in (2005) 7 SCC 300, where the Hon'ble Supreme Court held that Section 5 of the Limitation Act is inapplicable to Order XXI of CPC. He would therefore pray for the revision being allowed.

5.Per contra, Mr.T.M.Naveen, learned counsel appearing for the respondents would submit that though this Court in *Rasappan's case* has



elaborately dealt with the applicability of Section 5 of the Limitation Act to Order XXI and has held that Section 5 does not apply, inviting my attention to the circular issued by this Court in ROC.No.81478-A/2025/F1, the learned counsel for the respondents would submit that limitation of 30 days would apply only when an application is filed under Order XXI Rule 106(3) of CPC to set aside an order under Order XXI Rule 105(2) of CPC, on account of non-appearance and not for any other reason. Referring to clause (ii) of the circular, incorporating the decision of the Hon'ble Rules Committee of this Court, on the Administrative Side, the learned counsel for the respondents would submit that if the matter is dismissed on a date not fixed for hearing, but fixed for some other purpose, the order will not come within the ambit of Order XXI Rule 105(2) of CPC and Order XXI Rule 105(1) of CPC. He would therefore state that the execution petition was dismissed only for non production of the stay order granted by this Court and was not posted for hearing on a date on which the execution petition came to be dismissed. He would therefore state that the executing Court has rightly condoned the delay and directed the executing petition to be heard on merits. He would also rely on the decision of this Court in *Karuppa Gounder Vs. Pongiyanna Gounder and others*, reported in 2020 SCC Online



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Mad 28454 and Nattan Ambalam Vs. Dhanalakshmi, reported in 2011 (2)

MWN (Civil) 144.

6.I have carefully considered the submissions advanced by the learned counsel on either side and I have also gone through the order of the learned II Additional District Munsif, Puducherry, condoning the delay, subject to the respondent paying the cost of Rs.3,000/-.

7.The respondents are the decree holders. They filed an application in E.A.No.37 of 2022 in E.P.No.44 of 2002 for condoning the delay of 573 days in restoring E.P.No.44 of 2002, to file. The case of the petitioners is that the suit filed by them in O.S.No.572 of 1998 was decreed on 19.01.2000. The defendant preferred an appeal in A.S.No.68 of 2002 which came to be dismissed by the III Additional District Court, Puducherry. The defendant preferred A.S.No.1026 of 2002 before the High Court, Madras. In the interregnum period, the decree holders had filed E.P.No.44 of 2002 for executing the decree. It is an admitted fact that thereafter on 29.01.2019, Second Appeal filed by the defendant came to be dismissed, after impleading his legal representatives as appellants in the said Second Appeal,



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pursuant to the demise of the sold defendant.

8.The respondents, as petitioners have contended that the 1st petitioner had fallen ill and she was bedridden and the 2nd petitioner had to take care of her medical condition and he was also not able to prosecute the execution petition. It is also stated that on the date on which the EP came to be dismissed, the counsel was engaged in another Court and therefore, the delay was sought to be condoned. The said application was resisted by the revision petitioners herein by contending that the decree is dated 19.01.2000 and was hopelessly barred by limitation and the EP cannot be restored to execute a time barred decree.

9.It is also contended by the revision petitioners that the delay has not been satisfactorily explained and the respondents have not attended the execution proceedings even after disposal of the Second Appeal and therefore, they were abandoned the execution petition. The executing Court, finding that sufficient reasons have been assigned for condonation of delay, proceeded to impose cost of Rs.3,000/- on the respondents. It is noticed that



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the said amount has been deposited by the respondents as well.

10. In the revision, it is contended by the learned counsel for the petitioners that this Court, as well as the Hon'ble Supreme Court have held that Section 5 cannot be invoked in proceedings under Order XXI and therefore, the application ought not to have been entertained. In the case before the Division Bench, the successful bidder of one of the items of the properties that were brought for sale, resisted an application filed under Section 5 of the Limitation Act, stating that the application under Order XXI Rule 90 of CPC which was dismissed for default, cannot be restored beyond the period of 30 days. The Division Bench of this Court, finding that no reliance can be placed on the Madras Amendment, effected to Order XXI Rule 105 of CPC, after the amendment to the CPC in 1976 by Act 104 of 1976, held that the application to condone the delay was not maintainable.

11. The Hon'ble Supreme Court also in *Damodaran Pillai's case*, referred herein supra, in fact, approved the view of Justice Mohan in *Ayappa Naicker Vs. Subbammal*, reported in (1984) 1 MLJ 214. In fact, the ratio laid down in *Ayappa Naicker's case* was confirmed by the Division



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Bench of this Court in *N.M.Natarajan's case*. In the light of the above, there is no difficulty with regard to the settled legal position that Section 5 of the Limitation Act will not apply to an application filed under Rule 106(3) of Order XXI of CPC for bringing an application for restoration.

12.This Court, in *Karuppa Gounder's case*, held that when the execution petition came to be dismissed, after being repeatedly adjourned for the report of the Advocate Commissioner, it cannot be termed as dismissal under Rule 105(2) of CPC, that is dismissal for non-appearance of the petitioner, on the day when the petition was called for hearing. In fact, this Court held that in such circumstances, Section 151 of CPC would apply and the period of limitation would be three years in terms of Article 137 of the Limitation Act.

13.In *Nattan Ambalam's case*, this Court held that the executing Court has got inherent power to restore the execution petition which has been dismissed for default, by applying Section 151 of CPC. Applying the above ratio laid down in all the above cases to the facts of the present case, it is noted that the execution petition was being adjourned for filing status of



Second Appeal No.8140 of 2002, right from early 2017 onwards. In fact, on 03.02.2018, 19.02.2018, 03.03.2018, 26.03.2018, 07.04.2018, 23.04.2018, 18.06.2024, 07.07.2018, 18.07.2018, both parties were absent and the execution petition was adjourned only for filing a copy of the stay order granted in Second Appeal. On 18.06.2018, noting continuous absence of both parties, the executing Court directed appearance of both parties on 07.07.2018 and also directed filing a copy of the stay order. The EP was thus adjourned to 07.07.2018. On 07.07.2018, the executing Court has adjourned the EP to 18.07.2018 on which date also both parties, as already indicated above were, absent and the EP was posted for the appearance of the dercee holder and the EP was adjourned to 23.07.2018. It is only 23.07.2018 that the EP came to be dismissed.

14.As held by this Court in *Karuppa Gounder's case*, the dismissal of EP cannot be brought within the ambit of Order XXI Rule 105(2) of CPC because the Court had repeatedly adjourned the matter only to ascertain the status of the stay granted in the Second Appeal. Neither the petitioners nor the respondents have brought it to the notice of the executing Court. In such circumstances, I do not see how the bar of an application under Section 5 of



the Limitation Act under Order XXI Rule 106(3) of CPC can be pressed into service in the present case.

15. In any event, pursuant to the decision of this Court in *Rasappan's case*, the Hon'ble Rules Committee of the Madras High Court has also issued a circular, in and whereby, a decision has been taken on the Administrative Side that when the parties are represented by a counsel, who reports no instructions or continuously absence himself from appearance, leading to the inference that he has withdrawn from the matter, the Court must ensure fresh notice is issued to the party, giving the parties reasonable time to make alternative arrangements or to appear in person and only if after such notice, the party does not appear, then the Court may proceed to pass an order under Order XXI Rule 105(2) of CPC. Therefore, even in view of the decision of the Rules Committee of this Court as well, having noticed that the counsel for the respondent was continuously absent for several hearings, the executing Court ought to have ordered notice to the respondents, before proceeding to pass an order under Order XXI Rule 105(2) of CPC. This exercise has also not been done.



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16.In any event, as already discussed above, even the revision petitioners were not represented on any of the hearings. Therefore, they cannot now attempt to take advantage of their own wrong and accuse the respondents alone of not appearing before the executing Court. Both parties were under the impression that in view of the stay granted in the Second Appeal, the EP was being adjourned from time to time. Their respective counsel have also not brought it to the notice of the executing Court about the dismissal of the Second Appeal as well. In such view of the matter, I do not find any illegality or perversity in the order of the executing Court, directing the respondents to pay the cost of Rs.3,000/- and on such condition, the delay being condoned. I do not find any merit in the revision.

17.In fine, the Civil Revision Petition is dismissed. No costs.
Connected Civil Miscellaneous Petition is closed.

09.01.2026

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The II Additional District Munsif Court, Puducherry.



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P.B. BALAJI,J.

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Pre-delivery order made in
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