

**Application Nos.5904 and 5913 of 2025****in****E.P No.105 of 2018****in****C.S No.334 of 2017****MASTER****26.03.2026****COMMON ORDER**

1. There are two applications filed in the above execution petition. A.No.5904 of 2025 is filed to condone the delay of 228 days in filing the application to set aside the order dated 28.02.2025 in setting the applicant as exparte in the above execution petition. A.No.5913 of 2025 is filed to set aside the order dated 28.02.2025 setting the applicant exparte in the above execution petition.

2. The case of the applicant is that he had entered appearance in the above execution petition on 11.10.2018 and was participating in the proceedings through his counsel initially who had later informed him that due to COVID 19 pandemic courts are not functioning and thereafter he did not get any updates from his previous counsel. The applicant came to know that his property has been brought to auction sale by this Hon'ble Court on 08.10.2025 through an auction sale notice issued in "Malai Malar" newspaper daily dated 16.09.2025 and immediately the applicant approached the decree holder in person and came to know that the decree holder had met with an accident and gone bedridden and the applicant reassured the decree holder of settling the case amicably for which initially the decree holder also agreed on 07.10.2025 to receive the claim amount prayed in C.S No.334 of 2017 along with interest @ 6% per annum till the date of payment. But later denied the said offer and proceeded with the execution petition by auction sale with an ill intention to grab the applicant's property. The applicant further stated that the above said fact came to his knowledge only when one



stranger namely Sharath called him one day before the auction to enquire about the real market value of the auction property, though the said Sharath promised him to stop the auction sale and buy the auction property privately from the applicant, subsequently the said Sharath had participated in the sale and became a successful bidder for a very low price when compared to the real market price. Immediately, the applicant approached his erstwhile counsel and came to understand that his erstwhile counsel had not sincerely pursued his case in the above execution proceedings which resulted in setting him *exparte* on 28.02.2025.

3. Per contra, the respondent/decree holder filed his counter stating that as admitted by the applicant he had entered his appearance in 2018 which means this is not the case where the applicant is not aware of the proceedings. Even during COVID lock down period the courts were functioning and therefore the statement of the applicant that he was kept in dark about the status of the proceedings by this erstwhile counsel is a blatant lie. The applicant/Judgment Debtor has now portrayed a case where he learned about the auction proceedings vide paper publication dated 16.09.2025, however he has approached this Hon'ble court only at the *fag end* of the execution proceedings which would demonstrate that the applicant has approached this court with unclean hands. The respondent further stated that though he Judgment Debtor approached him two days prior to the auction i.e on 06.10.2025 to settle the dues but he offered to pay interest at only 6% which is only $1/4^{\text{th}}$ of the interest awarded by this court and is only the fraction of a sum payable to him. Therefore, he was not agreeable to the settlement and decided to proceed with the execution. The applicant further stated that nearly 1 $\frac{1}{2}$ months after the auction being carried out, the applicant has preferred the present application along with applications to set aside the order dated 28.02.2025 and to set aside the auction on 08.10.2025 which only goes to show that the applicant is trying to stall the execution proceedings by filing applications one after the other. The learned counsel for the



respondent/decreed holder relied upon the decision in **Rajneesh Kumar and Another --Vs-- Ved Prakash** reported in 2024 INS 891 SCC Online SC 3380.

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4. Another Judgment in **H.Gurusamy and Others --Vs-- A.Krishnaiah,** reported in 2025 INSC 53, wherein it is held that

“15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bonafides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time.”



5. Yet another Judgment in **Ram Karan Gupta –Vs-- J.S.Exim Limited, (2012) 13 SCC 568** wherein it is held that after considering the Constitution Bench judgment and other relevant case laws that deposit of the requisite amount in the court is a condition precedent or a sine qua non to application for setting the side the execution of sale and such an amount must be deposited within the prescribed time for making the application otherwise the application must be dismissed.

6. Now the point that arise for consideration before ths Court is whether this applications to condone the delay of 228 days in filing the petition to set aside the exparte order dated 28.02.2025 and to set aside the order dated 28.02.2025 in setting the applicant exparte are to be allowed or not?

7. Heard both side counsels. Perused the records. The learned counsel for the applicant/Judgment debtor submitted that the reason stated for condoning the delay of 228 days in filing the set aside petition is genuine and the mistake if any is only on the part of the applicant's erstwhile counsel for which the party should not be put at sufferance. In this aspect he relied upon the decision in Rafiq and Another –Vs-- Munshilal and Another AIR 1981 Supreme Court 1400, the decision in North Arcot District Vanniyakula Shatriya Sangam represented by its present Secretary M.Subramaniam –Vs-- M.Radhakrishnan and Another dated 07.11.2025 in CRP Nos.639 and 640 of 2025.

8. The learned counsel for the respondent/decree holder submitted that the present application is not at all bona fide. It is delaying tactics of the applicant/Judgment debtor to drag on the proceedings. In his counter the respondent had elaborately stated about the opportunities granted to the applicant in the execution proceedings. It is further submitted that it is not the case of the applicant that he is not aware of the pendency of



the execution proceedings but admittedly the applicant has entered his appearance through his counsel and subsequently has failed to represent the case. Further, if the reason stated by the applicant is bona fide he ought to have filed these applications at the stage before auction was conducted. But he had filed the applications only after 1 ½ months after conducting the auction sale. These applications are nothing but delay tactics of the applicant to stall the proceedings.

9. It is well settled proposition of law that the condone delay application shall be decided on the basis of the reasons assigned in the petition and not upon the merits of the main case. If the delay reason stated by the applicant is not satisfactory to the court then the delay application is to be dismissed irrespective of the days of delay. It is seen from the execution proceedings case records that notice was served upon the applicant/Judgment Debtor but despite receiving the notice the applicant failed to appear before this court and was set exparte on 31.10.2018 subsequent to which this court has ordered attachment on the same day. After effecting attachment, sale papers were filed by the respondent/decree holder and sale notice was also ordered to the applicant/Judgment debtor which was returned as unserved and the respondent/decree holder was permitted to effect substituted service on the applicant by way of paper publication and only then the applicant was set exparte on 28.02.2025. The one and only reason stated by the applicant/Judgment debtor for the delay of 228 days is that his erstwhile counsel had kept him in dark about the proceedings of the E.P which is not acceptable in view of the Judgment in **Rajneesh Kumar and Another –Vs– Ved Prakash 2024 SCC Online SC 3380** relied on by the learned counsel for the respondent/decree holder wherein it is held that *“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioner's in the Trial Court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the*



proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as a litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the Court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

10. Further, in the present case the applicant has not produced any documentary evidence to show that he followed up with his erstwhile counsel about the case, no correspondence, no affidavit from the previous counsel was filed to substantiate the allegation made against his erstwhile counsel. The applicant having admitted that he entered his appearance in the execution proceedings on 11.10.2018 has remained completely inactive for nearly 7 years, offering only a vague and bald allegations of counsels negligence and that he came to know about the exparte order only through auction sale notice seen in “Maalai Malar” newspaper dated 16.09.2025 is not acceptable. Further, it is seen from the case records that the Judgment Debtor has appeared before this court on 16.10.2025 prior to the date of auction i.e on 08.10.2025 but has not taken any steps to set aside the exparte order as well as to stay the auction sale and has filed these applications only on 13.11.2025 a month after the auction sale was conducted and when the case is pending for confirmation of sale. This court relied upon the Judgment in **2007 (2) CTC 643 G.Jayaraman –Vs-- Devarajan**, wherein our Hon'ble High Court has held that *“delay cannot be condoned as a matter of judicial generosity - right accrued to other side ought to be kept in view while considering the plea relating to affording opportunity to advance substantial justice.”*

11. This Court also embarks upon yet another Judgment in **2010 Law Weekly Page No.363 Padma and 2 Others --Vs-- Standard Literature Company (P) Limited**



represented by its Manager wherein it was held that “In view of the settled position, the party on whom the burden of explaining the delay vests, shall show sufficient cause for the delay to the suggestion of the court --- if any right accrues to the other party by lapse of time the delay could not be condoned, so as to defeat such rights.”

12. The above Judgments are squarely applicable to the facts of the present case. Because in the case on hand the auction purchaser has deposited the entire sale consideration and is awaiting for confirmation of sale and issuance of sale certificate in his favour. The applicant's act of remaining completely inactive for nearly 7 years without even contacting his erstwhile Advocate to know about the status of the case, offering only a vague and bald allegation of counsel's negligence is wholly unsatisfactory and not convincing, that too in this case where already the applicant has entered his appearance in the execution proceedings on 11.10.2018. As rightly pointed out, by the learned counsel for the respondent, a litigant cannot take shelter behind the alleged fault of the counsel without himself exhibiting due diligence. Vague allegations against the advocate, unsupported by material, cannot constitute sufficient cause. From the averments made out in the affidavit filed by the applicant in support of the applications, it is clear that the applicant is not following his case properly from the beginning itself. In view of the above discussion, this Court is of opinion that the Court cannot condone such an inexplicable and prolonged delay which defeats the finality of litigation and prejudices the rights of the auction purchaser who had already deposited the entire sale amount and awaiting for confirmation of sale and issuance of sale certificate in his favour. Liberal interpretation of “sufficient cause” cannot be extended to cases of utter negligence and total indifference as seen from the affidavit filed by the applicant himself, wherein he admitted his knowledge of the EP proceedings and his appearance in the EP after notice being duly served in EP.



13. Applying the principles laid down in *Rajneesh Kumar and Another –Vs-- Ved Prakash* cited supra, this court finds no sufficient cause to condone the delay in representation. The other contention raised by the respondent that the applicant cannot seek for set aside of auction sale is not discussed as the present application is only filed to condone the delay in filing the set aside application and to set aside the order dated 28.02.2025 setting the applicant *exparte* in the execution proceeding.

In the result, these applications are dismissed. No cost.

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