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A.Nos.1770 to 1773 of 2026
in
E.P.No.22 of 2022

MASTER
12.11.2026

ORDER

1. There are 4 applications filed by the applicants/Judgment debtors before this Court. A.No.1770 of 2026 is filed by the applicant/1st Judgment debtor to condone the delay of 1308 days in filing the application to set aside the exparte order dated 22.04.2022 and A.No.1771 of 2026 is filed by the applicant/1st Judgment debtor to set aside the exparte order dated 22.04.2022. A.No.1772 of 2026 is filed by the applicants/2nd & 3rd Judgment debtors to condone the delay of 1308 days in filing the application to set aside the exparte order dated 22.04.2022 and A.No.1773 of 2026 is filed by the applicants/2nd & 3rd Judgment debtors to set aside the exparte order dated 22.04.2022.

2. It is to be noted that the applications in A.Nos.1770 of 2026 & 1772 of 2026 were filed under Master summons under Order 14, Rule 10 of Madras High Court, Original Side Rules read with Section 5 of the Limitation Act. A.Nos.1771 & 1773 of 2026 were filed under Master summons under Order 14, Rule 10 of Madras High Court, Original Side Rules read with Order 21, Rule 106 of the Code of Civil Procedure.

3. The applicants in all the applications stated that the respondent herein filed the suit in C.S.No.923 of 2005 for specific performance which was decreed in favour of the respondent herein on 10.12.2012. Thereafter, the applicants herein filed appeal in OSA No.13 of 2014 which was allowed on 20.03.2019 by setting aside the Judgment and decree dated 10.12.2012 passed in C.S.No.923 of 2005 and the applicants herein who are the appellants there were directed to return the sum of

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Rs.40,00,000/- received by the applicants herein to the respondent along with interest @ 24% per annum. Subsequent, to which the respondent herein filed CMP No.18180 of 2019 wherein vide Order dated 06.01.2020 time frame was fixed by the Hon'ble Court for complying with the decree and the applicants herein were directed to pay the decreetal amount within a period of 8 weeks from the date of receipt of order copy. The applicants further stated that they could not arrange the funds within the stipulated time, meanwhile the respondent herein initiated the execution proceedings in E.P No.22 of 2022 and they were set exparte. Thereafter, the applicants filed applications in A.Nos.4285 and 4286 of 2022 to condone the delay of 109 days and to set aside the exparte decree wherein a conditional order was passed to deposit the entire decree amount within two weeks and once again the time was extended by another two weeks vide order dated 15.02.2023. Subsequently, pending E.P the applicants herein tried to make the payment to the respondent herein who wantonly refused to accept the same with a malafide intention to grab the suit schedule property by bringing it to court auction. Meanwhile, both the applicant as well as the respondent herein had preferred appeals before the Hon'ble Supreme Court with condone delay application in SLP (C) Diary No.21075 of 2023 and SLP (C) Diary No.15472 of 2024 respectively which were dismissed on 14.11.2024. Thereafter, the E.P was dismissed for non-prosecution on 07.02.2024 and then the respondent herein filed A.No.595 of 2025 and A.No.4366 of 2025 to condone the delay in filing the restoration application and to restore the E.P which were allowed on 22.08.2025 and 25.11.2025 respectively and the E.P was restored to file. Only then this applicants have filed these applications to condone the delay of 1308 days in filing the set aside application to set aside the exparte Order dated 22.04.2022 and to set aside exparte Order dated 22.04.2022 respectively.

4. The respondent/decree holder filed a common counter in all these applications and stated that the applicants have already filed two applications in A.Nos.4285 & 4286 of 2024 in the month of September 2022 with the same prayer as

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that of in these applications and the same was also dismissed by this court on 15.02.2023 and hence, these applications are not maintainable before this court and the applicants ought to have filed CRP or CMA. Though it is the case of the applicants that they are ready to deposit the entire decreetal amount throughout the proceedings pending before this court but till date they have not deposited a single pie before this court and so these applications are liable to be dismissed both on facts and on law.

5. Now the point for consideration is whether the delay of 1308 days is to be condoned and whether the exparte order dated 22.04.2022 and 24.06.2022 are liable to be set aside or not?

6. It is well known and settled law that Section 5 of Limitation Act has no application in execution proceedings. Whenever any order is passed exparte under Sub Rule 2 of Rule 105 of Order 21, the affected party may apply to set aside the order under Rule 106 (3) of Order 21 by showing sufficient cause for his non-appearance provided that the application shall be made within 30 days.

7. When the E.P is dismissed under Order 21, Rule 105 (2) of C.P.C for non-appearance of the petitioner, the application to set aside the Order shall be made under Order 21, Rule 106 (1). Similarly, when notice on the E.P has been duly served on the Judgment Debtor and he was set exparte under Order 21, rule 105 (3), the application to set aside the exparte ordre shall be made under Order 21, Rule 106 (1). In both the occasions, the appliction shall be made within 30 days from the date of order and not from the date of knowledge.

8. If the applicant fails to take out application within 30 days, the remedy available to him is not under any other act but in Order 21 itself. Previously, there was a proviso under Order 21, Rule 105 (4) which was deleted and a proviso clause

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was inserted in Sub Rule (3) by Madras High Court amendment which runs as follows:

"Provided when an application may be admitted after the said period of 30 days if the applicant satisfies the court that he had sufficient cause for not making the application within said period."

9. As per the said provision if sufficient cause is shown the application to set aside the exparte order or the order of dismissal can be made even after expirty of 30 days.

10. This court obliges to refer the recent decision in **Sundarammal and Another –Vs-- (1) Kanagaraj and Another in C.R.P Nos.808 & 809 of 2025 and C.M.P No.4731 of 2025 dated 26.06.2025** wherein our Hon'ble High Court has observed as follows:

"*50. Hence, in the light of the above discussion, this Court is of the view that the proviso introduced to Order 21 Rule 105 CPC by Madras Amendment, 1972, has been repealed by virtue of Section 97 of the Amending Act.*

51.However, this Court is conscious of the fact that parties should not suffer due to the negligence on the part of their counsel in not following the cases properly. The High Court can exercise its powers under Section 122 CPC to set out its own procedure; to make rules regulating their own procedure for the Civil Courts under its jurisdiction; and to bring in amendment to the Rules in the First Schedule of Code of Civil Procedure. As the proviso to Rule 105 of Order 21 CPC, brought in by the Madras High Court Amendment, 1972, providing powers to the Courts to condone the delay in execution proceedings, has been repealed after the Central Amendment, 1976, this Court is of the view that, it is for the High Court, on the administrative side, to consider re-introducing the proviso on similar lines and placing the same below Order 21 Rule 106 (3) of the present Code. However, till such an amendment is brought under the First Schedule, the provisions under Order 21 Rule 106 (3) CPC as of now, alone would prevail and the Execution Court has no power to condone the

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delay in execution proceedings under Order 21 CPC, after expiry of the statutory period of limitation.

52.Till such time a decision is taken by the Rule Committee of this Court on the administrative side, the following directions are issued under Article 227 of the Constitution to ensure that no undue injustice is caused to a genuine litigant:

i. Order XXI Rule 105 (2) deals with an order dismissing the matter when there is no appearance for the party when the case is called on for hearing. In such cases, if the party is represented by counsel who reports no instructions or continually absents 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 him reasonable time to make alternative arrangements or to appear in person. If after such notice the party does not appear on the next date of hearing or make alternative arrangements with reasonable time, the Court may proceed to pass an order under Order XXI Rule 105 (2).

ii. If the matter is dismissed on a date not fixed for hearing but on a date fixed for some other purpose, the order will not come within the ambit of Order XXI Rule 105 (2) (Ref: Radhakrishnan v. State of Kerala, 2005 SCC OnLine Ker 589 : (2006) 1 KLT 28), and Order XXI Rule 105 (1) CPC.

iii.It is also clarified that an order passed under Order XXI Rule 105(2) is an order of dismissal for non-appearance and not for any other reason. In Karuppa Gounder v Pongiyanna Gounder, CRP (NPD) 1524 of 2018, the Executing Court invoked Order XXI Rule 105 (2) CPC to dismiss the Execution Petition on account of the failure of the Commissioner to file his Report. It was held by Hon'ble Justice R.Subramanian that the period of limitation of 30 days under Order XXI Rule 106 (3) CPC to set aside an order under Order XXI Rule 105 (2) CPC is only for setting aside orders

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dismissing the petition for non-appearance and not for any other reason. If the Execution Petition is dismissed for any other reason, the same would be governed by Article 137 of the Limitation Act, 1963, which prescribes a period of 3 years.

iv. In any event, the dismissal for non-prosecution of an Execution Petition does not bar a fresh EP, provided the same is filed within the period of limitation.

v. An order under Order XXI Rule 105(3) CPC is an order passed ex parte where the opposite party does not appear. Where the opposite party does not appear, the Court may set him ex parte and thereafter, proceed to hear the application and pass orders. Order XXI Rule 105(3) CPC also says "the Court may hear the application ex parte and pass such order as it thinks fit." The limitation prescribed under Order XXI Rule 106(3) CPC is to set aside an order passed in consequence of the opposite party being set ex parte. Thus, if the opposite party is set ex parte and if he appears before the disposal of the petition and requests to have the order setting him ex parte set aside, such an application will not fall within Order XXI Rule 106(3) CPC, since an order setting the opposite party ex parte is not an order under Order XXI Rule 106(3) CPC. It is only when an order is passed in the petition in consequence of the opposite party being set ex parte, the provisions of Order XXI Rule 105(3) & 106(3) stand attracted.

vi. Order XXI Rule 106(3) CPC for setting aside an order passed under Order XXI Rule 105(3) CPC is 30 days from the date of the order if notice was not served. This is because Order XXI Rule 105(3) CPC states "Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear….". Thus, if notice is served and there is no

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appearance, the opposite party cannot claim the benefit of Order XXI Rule 106(3) CPC to have the 30 days computed from the date of the order. Order XXI Rule 106(3) CPC itself makes it clear that the benefit of having limitation running from the date of order applies only in cases where notice is not served on the opposite party.

vii.There may be cases where the opposite party has engaged a counsel who has absented himself frequently leading to an inference that he has abandoned the matter. In C.Subramania Mudali v Srinivasa Pillai, 1979 92 LW 662, it is observed as follows:

"The record shows that learned counsel who had entered appearance for the auction- purchaser was absent in court when the case was called. It subsequently transpired that he had discontinued his profession and had put his decision into effect by making himself scarce from all law courts. Apparently, the client was not aware of these developments until long afterwards.

I like to imagine that lawyers practising in courts may have excellent reasons of their own for turning their back on their profession, renouncing their robes and shunning the Courts at any given moment. But where the clients are not informed of their decision beforehand so as to enable them to make alternative arrangements, the result might well be to leave them in the lurch, and where parties find themselves in a quandary on such occasions, it would be a proper exercise of the court's good conscience to redeem the litigants from the faults of the lawyers."

To avoid such situations, where the Court finds that the opposite party was initially represented by counsel who has thereafter not appeared on a day fixed for hearing of the application, it would be prudent for the Court to order notice to the party fixing an alternative date for hearing of the application. If notice is served on

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the opposite party, and on the said date, there is no appearance once again, the Court may proceed to pass orders under Order XXI Rule 105(3) CPC."

11. In the case on hand the E.P was filed in the year 2022 and the applicant in A.No.1770 & 1771 of 2026 who is the 1st respondent in the main E.P was served with notice in E.P on 23.03.2022 and with respect to the applicants in A.Nos.1770 to 1773 of 2026 who are the 3rd and 4th respondents in the main E.P, service was completed on 24.06.2022 by way of effecting paper publication and since the 1st respondent, 3rd and 4th respondents have not appeared before this court they were set exparte on 22.04.2022 and 24.06.2022 respectively. The reason stated by the applicants in all these applications are that due to non-agreement of the decree amount as the respondent never came forward with the memo of calculation and due to the applicants old age and ill-health he could not keep up with the court cases and also since he was informed that they are being appearing in the case for hearing and that he was not instructed for filing another application, meanwhile, the E.P was also dismissed for non-prosecution they could not take any steps to set aside the exparte order passed against them.

12. Per contra, the learned counsel for the respondent / decree holder argued that the present applications are not maintainable either in law or on facts because the applicants herein have already filed A.Nos.4285 of 2022 and 4286 of 2022 to condone the delay of 109 days in filing the application to set aside the exparte order dated 22.04.2022 and to condone the delay of 56 days in filing the application to set aside the exparte order dated 24.06.2022 respectively and the same were dismissed on 15.02.2023 on merits after due contest made by both parties.

13. As rightly pointed out by the learned counsel for the respondent, the applicants herein has not spoken a single word about the reason why they have not preferred any CRP as against the Order passed by this court on 15.02.2023 in A.Nos.4285 of 4286 of 2022. On perusal of the case records, it is seen that the

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applicants have already filed two applications with similar prayers to condone the delay in filing the set aside applications which was dismissed by this court after due contest made by both the parties.

14. In view of the above said facts and circumstances of this case and also relying upon the Order in **Sundarammal's case** cited supra, this court is of opinion that the applicants are not entitled to maintain the A.Nos.1770 of 2026 and 1772 of 2026 filed under Order 14 Rule 10 of Madras High Court Original Side Rules r/w Section 5 of Limitation Act and A.No.1771 of 2026 and A.No.1773 of 2026 filed under Order 14 Rule 10 of Madras High Court Original Side Rules r/w Order 21, Rule 106 of the Code of Civil Procedure. As there is no provision under Order 21 of the C.P.C to condone the delay in filing an application to set aside the order of dismissal made under Order 21, Rule 105 (3) of C.P.C.

15. Therefore, this court does not find any merits in these applications either in law or on facts.

In fine, all the four applications are dismissed. No costs.

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