



CRP(MD). No.3600 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 25/02/2026

CORAM

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

CRP(MD). No.3600 of 2025

Mahalingam

... Petitioner

Vs

P. Jerold

... Respondent

PRAYER :- Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated, 14.08.2025 made in E.P.No.3 of 2023 in O.S.No.97 of 2010 passed by the learned District Munsif, Eraniel.

For Petitioner : Mr.D. Saravanan

For respondent : Mr. J. Vimal Pandian
Legal aid counsel

ORDER

The present Civil Revision Petition is filed challenging the order, dated 14.08.2025 passed in E.P. No. 3 of 2023 in O.S. No. 97 of 2010, which reads as follows:



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“This petition filed under order XXI Rule 35 and section 151 of Civil Procedure Code to pass an order to handover or deliver of vacant possession of the petition schedule property with the help of the Court Ameen.

Petitioner not appeared petitioner called absent. Hence this execution petition is dismissed for default on side of the petitioner.”

2. The learned counsel appearing for the revision petitioner submitted that the executing Court ought to have granted an opportunity to the revision petitioner before dismissing the Execution Petition, since the revision petitioner is the decree holder.

3. Despite service of notice, the respondent did not appear before this Court. This Court appointed Mr. J. Vimalpandian as Legal Aid Counsel.

4. The learned Legal Aid Counsel appearing for the respondent, submitted that the present Civil Revision Petition itself is not maintainable. He contended that when an order is passed in execution proceedings under Order XXI Rule 35 read with Section 151 of the Code



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of Civil Procedure, when the petitioner was called absent, the Execution Petition would be dismissed for non-prosecution. Hence, the proper remedy available to the revision petitioner is to file an application to set aside the dismissal under Order XXI Rule 106 CPC.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. In view of the above, this Court is of the opinion that the revision petitioner ought to have filed an application under Order XXI Rule 106 CPC before the executing Court to set aside the order of dismissal.

7. Accordingly, this Civil Revision Petition is disposed of, granting liberty to the revision petitioner to file an application to set aside the dismissal before the trial Court within a period of 30 days from the date of receipt of a copy of this order. No costs.



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8. This Court places on record its appreciation for the effective assistance rendered by the learned Legal Aid Counsel. The Legal Services Authority is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the Legal Aid Counsel within a period of two weeks from the date of receipt of a copy of this order.

25.02.2026

TRP

Index : yes/ no

Internet : yes / no

TO

The District Munsif, Eraniel.



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N. SENTHILKUMAR,J

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