



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-08-2026

CORAM

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

A Nos. 2235, 2236 of 2026 and 4909 of 2025

in

EP NO. 105 of 2018

A.No.2235 of 2026

T.A.S.Jawahar Ayya
alias C.Jawher Anand,
2/75, Blue Beach Road,
2nd Cross Street, Neelangarai, Chennai-41

..Appellant

Vs

1. D.V.Karunakar and another
S/o.D.C.Krishnaswamy, No.7, Kamalabhai
Street, T.Nagar, Chennai 600 017.
2. Ozone Homes Private Limited
Rep.by its Authorized Signatory
Mr.K.Krishnan, No.63, G.N.Chetty Road,
T.nagar, Chennai 600 017.

..Respondents

A No. 2236 of 2026

T.A.S.Jawahar Ayya
alias C.Jawher Anand,
2/75, Blue Beach Road,
2nd Cross Street, Neelangarai, Chennai-41

..Appellant

Vs

1. D.V.Karunakar
S/o.D.C.Krishnaswamy, No.7, Kamalabhai
Street, T.Nagar, Chennai 600 017.
2. Ozone Homes Private Limited
Rep.by its Authorized Signatory
Mr.K.Krishnan, No.63, G.N.Chetty Road,
T.nagar, Chennai 600 017.



A No. 2235 of 2



..Respondent(s)

A No. 4909 of 2025

WEB COPY D.V.Karunakar

S/O of D.C.Krishnaswamy,
No.7, Kamalabai Street, T.Nagar, Chennai-600 017

..Applicant

Vs

1. T.A.S.Jawahar Ayya alias C.Jawher Anand and another
2/75, Blue Beach Road, 2nd Cross Street,
Neelangarai, Chennai 600 041.
2. Ozone Homes Private Limited
Rep.by its Authorized Signatory
Mr.K.Krishnan, No.63, G.N.Chetty Road,
T.Nagar, Chennai 600 017.

..Respondents

A No. 2235 of 2026

Appeal against the Order dated 26/03/2026 made in A.No.5904 of 2025 in E.P.No.105 of 2018 in C.S.No.334 of 2017 on the file of the Master, dismissing the Appellant's application preferred for condoning the delay of 228 days in filing the application to set aside the order dated 28/02/2025 setting the appellant exparte in the E.P.No.104 of 2018 in C.S.NO.334 of 2017.

A No. 2236 of 2026

To Pass an order allowing the above appeal by setting aside the Order dated 26/03/2026 made in A.No.5913 of 2025 in E.P.No.105 of 2018 in C.S.No.334 of 2017 on the file of the Master Court.

A No. 4909 of 2025

Grant leave to the Applicant/Decree Holder to participate and bid in the auction sale dated 08/10/2025 to be held pursuant to the order dated 13/08/2025 passed



by this Honble Court in E.P.No.105 of 2018 in C.S.No.334 of 2017.

Appearance in A. Nos. 2235 & 2236 of 2026

For Appellant: M/S.S.Abu Backer Sidhic

For Respondents: Mr.Govind Chandrasekhar for R1
Mr. Kishore Balasubramanian for Auction Purchaser

Appearance in A. No. 4909 of 2025

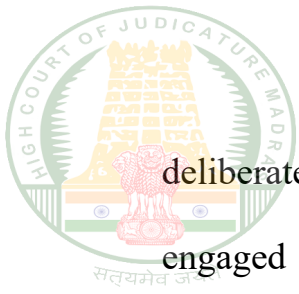
For Applicant: Mr.Govind Chandrasekhar

Common Order

A. Nos. 2235 and 2236 of 2025 are against the order dated 26.03.2026 made in A. No.5904 of 2025 and 5913 of 2025 in E.P. No.105 of 2018 in C.S. No.334 of 2017 on the file of the Master, dismissing the appellant's application for condoning the delay of 228 days in filing the application for setting aside the order dated 28.02.2025 and for setting aside the auction sale and to number the application in A. No.197277/2025 filed under Order 21 Rule 89 CPC.

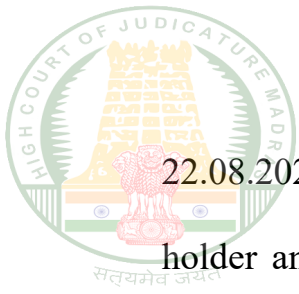
2. The appellant is the judgment debtor in E.P. No.105/2018. The 1st respondent is the decree holder in the said execution proceedings.

3. Mr.S.Abu Backer Sidhic, the learned counsel appearing for the appellant/judgment debtor submitted that the judgment debtor had not



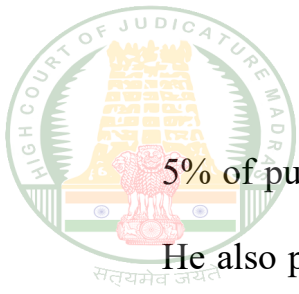
deliberately absent in the executing proceedings. It is contended that, he had engaged an erstwhile counsel, but the said counsel did not properly follow the proceedings and failed to inform the judgment debtor about the subsequent developments. It is, therefore, submitted that the judgment debtor should not be made to suffer for the omission or negligence of the counsel. It is further contended that the judgment debtor has a valid defence in the execution proceedings and that, in the interest of substantial justice, the delay of 228 days ought to have been condoned by the learned Master and an opportunity ought to have been given to contest the execution proceedings. Without giving sufficient opportunity to the judgment debtor, his property was brought to sale for inadequate price.

4. The learned counsel for the appellant would further contend that in the above execution proceedings, the judgment debtor entered appearance on 11.10.2018 and initially conducted the proceedings through his previous counsel who informed him that, “no Court works happening due to COVID 19”, and, to his utter shock, he came to know through one stranger, namely Sharath, that his property is put on auction sale by the learned Master on 08.10.2025. It is further submitted that, the market price of the property is four times more than the debts owed to the decree holder. Immediately the judgment debtor contacted his erstwhile counsel and came to understand that he did not pursue his case in the execution petition seriously, which resulted in setting him ex parte on



22.08.2025 by this Court. Immediately the judgment debtor met the decree holder and offered to pay the claim amount with 6% interest, which was not accepted by him. Thereafter, the judgment debtor came to know that the said Sharath was a successful bidder in the auction held on 08.10.2025. Thereafter, his present counsel appeared before the Master on 22.10.2025 and sought permission to take out an application under Order 21, Rule 89 for setting aside the sale. However, the learned Master declined to hear the counsel since the *ex parte* order was was operating against the judgment debtor. Thereafter, the appellant filed an application to advance the hearing in the execution petition and to post other pending applications on 12.12.2025. He had also filed applications for setting aside the *ex parte* order passed on 28.02.2025 along with condone delay petition to condone 228 days delay under Order 21 Rule 89 CPC in filing the set aside petition and also an application for setting aside the auction sale took place on 08.10.2025 in A. No.5904/2025 and 5913/2025. However, the learned Master had dismissed the said applications on 26.03.2026 against which the present appeals are preferred.

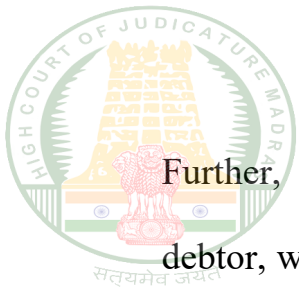
5. He further prayed for a direction to number the application in A. No.197277/2025 filed under Order 21 Rule 89 of CPC and permit the judgment debtor to deposit the sale proclamation amount to the credit of E.P. No.105 of 2017 in C.S. No.334/2017 and hear the same in accordance with law and also to permit the judgment debtor to deposit any such other money payable towards



5% of purchase money payable to auction purchaser and the poundage charges.

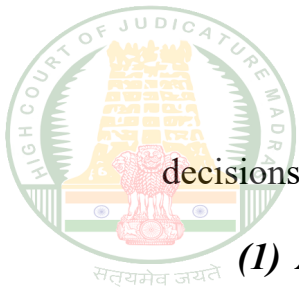
He also prayed for staying all further proceedings in respect of preparation and issuance of sale certificate in favour of the 3rd respondent pending disposal of the present appeals / applications.

6. Per contra, Mr. Govind Chandrasekhar, the learned counsel appearing for the decree holder objected the said appeals by stating that the judgment debtor had made appearance in the above execution petition on 11.10.2018 and was participating in the proceedings through his counsel and the same is also admitted by him in the application. Therefore, it is made clear that the judgment debtor was aware of the proceedings. He would further contend that the present appeals are filed only to drag on the proceedings. Despite several opportunities granted to the judgment debtor in the execution proceedings, he failed to settle the decretal amount before auction was conducted. Further, the reasons stated in the condone delay application was not sufficient and that the Hon'ble Supreme Court in ***Rajnish Kumar and Anr. vs. Ved Prakash reported in 2024 INSC 891***, deprecated the practice of blaming the counsels. The judgment debtor ought to be vigilant about the judicial proceedings pending in the Court. He would further contend that the appeal is nothing but an attempt to delay the execution of decree. Since the judgment debtor after entered appearance in the execution proceedings and remained completely inactive for nearly 7 years, the decree holder, proceeded with the execution of the decree.



Further, sale papers were filed and sale notice was issued to the judgment debtor, which was returned unserved, and paper publication was effected. Only thereafter, the judgment debtor was set ex parte. It is, therefore, contended that the appellant cannot now take shelter under the plea that the erstwhile counsel failed to follow his case. Hence, the learned Master rightly dismissed the said applications, warrants any interference.

7. The learned counsel also opposed the numbering of the application filed by the judgment debtor under Order 21 Rule 89 CPC seeking to set aside the Court auction sale conducted in respect of the subject property, contending, *inter alia*, that the sale has been confirmed and a sale certificate has also been issued and the decree holder had also received 50% of the decretal amount. His further contention is that, the judgment debtor who had filed an application under Order 21 Rule 89 failed to make the requisite deposit. He would contend that Order 21 Rule 89 does not merely permit filing of an application, the deposit of the amount prescribed under Rule 89 is a condition precedent / *sine quo non* for an application to set aside the Court sale. The judgment debtor in this case never deposited the requisite amount within the prescribed period, therefore, this Court has no discretion to consider the Rule 89 application merely to enable the judgment debtor to establish that the property fetched an inadequate price. Hence, prayed for dismissal of the appeals preferred by the judgment debtor. The learned counsel has relied upon the following three



decisions for Order 21 Rule 89 CPC.

(1) Annapurna vs. Mallikarjun and another reported in (2014) 6 SCC 397.

(2) Dadi Jagannadham vs. Jammulu Ramulu and others reported in (2001) 7 SCC 71

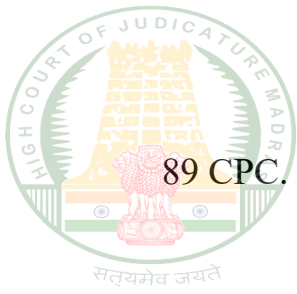
(3) Sundarammal and another vs. Kanagaraj and another reported in 2025 SCC OnLine Mad 2980.

8. Heard. Records perused.

9. This appeal is directed against the order passed by the learned Master in the execution proceedings, dismissing the condone delay petition and for numbering the application filed under Order 21 Rule 89 CPC. On the facts stated, the appeal by the judgment debtor should be examined carefully because there are two separate matters:

- (i) The order of the learned Master dismissing the condone delay petition
- (ii) The non numbering of the Rule 89 petition for want of statutory deposit.

10. The learned Master had dismissed the condonation petition on the ground that no sufficient cause shown by the judgment debtor. Further, the petition filed under Order 21 Rule 89 CPC was not numbered, since the judgment debtor had failed to deposit the amount required under Order 21 Rule



89 CPC.

WEB COPY

11. The learned counsel for the appellant / judgment debtor would contend that the learned Master ought not to have dismissed the condonation petition and proceeded with the auction and that the appellant should be afforded an opportunity to discharge the decree amount. It is further contended that the sale is liable to be interfered with on the grounds set out in the appeal.

12. At the outset, it is necessary to notice the scheme of Order 21 Rules 105 and 106 of CPC. Rule 106 provides a specific remedy to a person against whom an ex parte order is passed in Execution Proceeding. Such an application has to be made within the period prescribed under Rule 106(3) CPC.

13. In the present case, the appellant seeks condonation of delay of 228 days in filing the application ought to be considered on the footing that the Court has jurisdiction to examine whether the explanation constitutes sufficient cause under the applicable provision. The facts placed before this Court do not disclose any acceptable explanation for such prolonged inaction. The records disclose that the judgment debtor had entered appearance in the execution proceedings. Therefore, this is not a case where the judgment debtor was unaware of the institution of the execution proceedings. Despite having entered appearance, the appellant did not effectively participate in the proceedings for a

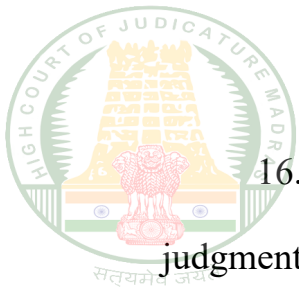


considerable length of time. Further, the subsequent events are also significant.

The decree holder proceeded with the execution. Attachment was effected. Sale papers were filed. Sale notice was issued to the judgment debtor. The notice was returned unserved and the decree holder thereafter resorted to paper publication. It was only after these steps had been taken that the appellant was set exparte.

14. In such circumstances, the explanation that the erstwhile counsel did not follow the case cannot, by itself, constitute sufficient cause. A litigant who has entered appearance in execution proceedings cannot remain wholly inactive for years and, after the decree holder has taken substantial steps towards execution, seek to reopen the proceedings merely stating that his counsel did not inform him of the progress of the case. It is true that, in appropriate cases, a litigant should not ordinarily be deprived of an opportunity on account of a genuine mistake or omission of the counsel. But in the present case, the judgment debtor had entered appearance and remained silent till the sale was conducted. Therefore, no indulgence can be shown to the judgment debtor.

15. The next question arises for consideration is whether the judgment debtor can maintain a petition under Order 21 Rule 89 without making the statutory deposit.



16. Order 21 Rule 89 is intended to afford a final opportunity to the judgment debtor to save his property from the consequences of an auction sale.

The Rule enables the judgment debtor or a person entitled to apply under the Rule to have the sale set aside upon compliance with the statutory conditions.

The two essential requirements are:

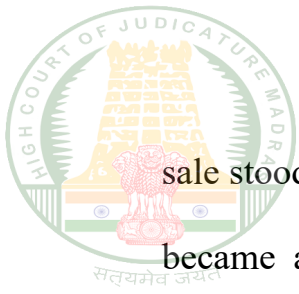
- (i) deposit of a sum equal to 5% of the purchase money for payment to the auction purchaser; and
- (ii) deposit of the amount specified in the sale proclamation for recovery of which the sale was ordered, less the amount received by the decree holder after the proclamation.

Thus, Rule 89 gives the judgment debtor a final opportunity to put an end to the execution proceedings and save his property before the sale is confirmed. Order 21 Rule 89 requires the applicant to deposit, in Court, 5% of the purchase money for payment to the auction purchaser and the amount specified in proclamation for payment to the decree holder, subject to the statutory provisions. The Hon'ble Supreme Court has repeatedly held that the deposit contemplated under Rule 89 is a condition precedent or sine quo non for an application under that provision. A mere application without the requisite deposit does not confer upon the judgment debtor a right to have the sale set aside under Rule 89.



17. Further, an application under Order 21 Rule 89 for setting aside a sale has to be filed within 60 days from the date of sale as per Article 127 of the Limitation Act, 1963. The Hon'ble Supreme Court in ***Annapoorna vs. Mallikarjun, 2014 6 SCC 397***, reiterated that the period of limitation for an application under Rule 89 is 60 days from the date of sale and that the statutory deposit contemplated by Rule 89, also to be made within the prescribed period. Therefore, a judgment debtor cannot ordinarily wait until the sale is confirmed and thereafter invoke Rule 89 as a matter of right. Further, Order 21 Rule 92(1) provides that where no application is made under Rules 89, 90 or 91, or where such applications is made and disallowed, the Court shall make an order confirming the sale, whereupon the sale becomes absolute.

18. In the present case, the appellant admittedly did not make the statutory deposit. Consequently, the petition invoking Order 21 Rule 89 could not have been entertained as a maintainable application for setting aside the sale under that provision. The mere presentation of such an application, without compliance with the mandatory requirement of deposit, does not create a vested right in favour of the judgment debtor. Further, the sale was conducted and the same was confirmed under Order 21 Rule 92 CPC. The sale certificate was thereafter issued in favour of the auction purchaser. Even assuming that the application under Order 21 Rule 89 has been filed in time, however, without complying the statutory deposit. The application is not maintainable. Once the

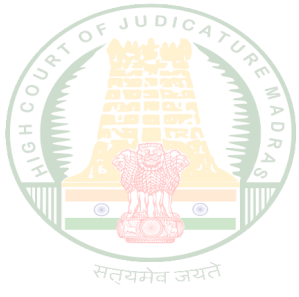


sale stood confirmed, the property is vested in the auction purchaser and the sale became absolute. The subsequent issuance of the sale certificate is only a formal recognition of the completed sale and does not keep alive the right of the judgment debtor under Rule 89 CPC. Further, the appellant has not established any specific material irregularity in the publication or conduct of the auction which has caused substantial injury. It is also relevant that the appellant having failed to comply with Order 21 Rule 89, cannot indirectly obtain the benefit of Rule 89 by styling the challenge as an appeal against the order of the learned Master.

19. In the result, the appeal in Application Nos. 2235 and 2236 of 2026 are dismissed. Further, Application No.4909 of 2025 is closed as infructuous. The order of confirmation of sale shall remain undisturbed. The 1st respondent / decree holder is permitted to withdraw the balance decretal amount.

21-08-2026

BGA



WEB COPY

A No. 2235 of 2



K.GOVINDARAJAN THILAKAVADI J.

BGA

**A Nos. 2235, 2236 of 2026 and 4909 of 2025
in
EP NO. 105 of 2018**

21-08-2026