

Before the Motor Accidents Claims Tribunal
(In the II Court of Small Causes, Chennai)
Present: *Tmt. K. Jyothi, B.Sc, M.L.,*
Thursday the 28th day of August 2025
M.P's 3 & 4 of 2025 in M.P'S 1&2 OF 2021 in MCOP No. 3748 of 2013

Mr. Thomas Chandy

...Petitioner/Petitioner/Respondent

Vs

Mrs. Vibhasethi

...Respondents/Respondents/Petitioner

Petitions filed Under Section 5 of CPC

The petitions came up before me for final hearing on 28.08.2025 in the presence of M/s. VAT Legal, G. Abraham Prabhu, Vijay Gurudass Learned Counsel for the Petitioner, M/s. B.Ravi Raja, G.Vikraman & Kalpana Mani Learned counsel for the Respondent upon hearing the arguments on both sides and upon perusing the entire records of the case, having stood over for consideration till this date, this Tribunal pronounces the following:-

COMMON ORDERS

The petitions are filed Under Section 5 of CPC, seeking to condone the delay of 525 days, in filing the petitions to restore two petitions namely MP'S 1 & 2 OF 2021 which were dismissed for default on 27.06.2023.

1. PETITION AVERMENTS IN MP 'S 1 & 2 of 2025 BRIEF:-

The petitioner is the respondent in main MCOP and that the present petition is filed to Implead the Legal Heirs of the deceased Respondent in M.P No. 2 of

2021 in MCOP 3748 of 2013 which was dismissed on 27.06.2023 on the file of this Hon'ble Court along with a Petition seeking Condone Delay in filing the said Petition that may kindly be read as part and parcel of this Affidavit. The Respondent /Petitioner obtained an exparte decree dated 01.12.2016 without my knowledge and worse was the fact the petitioner was not even allowed to represent and contest the proceedings. The Respondent had deliberately given the address as mentioned in the cause title at Nungambakkam, Chennai which was sold by the petitioner in the year 2011 and hence Court Summons/Notice never reached the petitioner or his knowledge and recording the fact that the service was not completed, this Hon'ble Court had ordered for substituted service by paper publication. The Respondent knowing well on the other hand knew his residing address at the time of filing the MCOP and also at the time of obtaining an exparte decree but remained silent and took paper publication and had shown that as a completion of service and obtained an exparte behind the back. It further submitted that, based on the exparte decree dated 01.12.2016 the Respondent had filed an execution petition in EP No. 236 of 2019 wherein the Respondent adopted the same trick by stating a different address from the one mentioned in the MCOP and obtained substituted service by paper publication. Somehow, getting knowledge of the EP proceedings, the petitioner filed Petitions to set aside the exparte order passed in the MCOP No: 3748 of 2013 together with the condone delay petition for a reason that the notice was not served on the petitioner in MP No: 1 and 2 of 2021 on the file of this Hon'ble Court. When the said Petitions were pending for filing Counter, the Respondent herein died and the same had been posted for 'steps' to implead the Legal Heirs since 15.02.2022 on wards, that we were not able to find the legal heirs of the deceased Respondent herein which will enable us to file the

Petition to implead the Legal Heirs. It is significant to state that even in EP No. 236 of 2019, the Legal Heirs of Respondent herein did not file a Petition to Implead the Legal Heirs of the Respondent herein. Therefore, without the details of Legal Heirs, there was no way we would be able to obtain the details and file the Petition unless the details are given, hence for steps not taken the said Petitions. MP No 1 and 2 of 2021 were dismissed on 27.06.2023. The despite not taking steps the Execution Petition was not dismissed and after a period of 855 days of delay, now the Legal Heirs of Respondent herein has filed the Petition with the details of the Legal Heirs of the deceased Respondent herein. Knowing well the petitioner will be able to file steps only after the respondent submitted the details of legal heirs of the deceased respondent they have failed to file steps in E.P, purposely to prevent petitioner from filing steps in time that only with delay of 855 days the steps to implead legal heirs of respondent in the E.P filed. The Respondent had delayed the court proceedings with an intention to use this Hon'ble Court as a tool to dismiss the MP Nos: 1 and 2 of 2021. At this juncture it is necessary for the interest of justice to restore the Setaside and Condone delay Applications filed by the petitioner together with a delay in Impleading the Legal Heir Petition. Hence, I am now filing the present Petitions to Restore the Set aside Petition together with Condone Delay Petition that was dismissed on 27.06.2023. If only the details were given or the Petition to implead the Legal heirs in EP No: 236 of 2019 filed earlier the petitioner would have filed the Restoration Petition within a period of 30 days from the date of dismissal of above Petitions. The same was not done, hence the petitioner was not able to file the above Petition within the time frame. And it is necessary for me to file this Condone Delay Application in Mp No. 2 of 2021 which was dismissed on 27.06.2023 with a delay of 525days. The petitioner had

not done anything wrong in the eyes of law and the petitioner is having good defense in the MCOP.

2.COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS 2 to 4:-

The Respondent's mother had filed the above MCOP No.3748/2013 against the petitioner under Section 166 of the Motor Vehicles Act and Rule 3 of the MACT Rules claiming compensation of Rs. 15,00,000/- for the injuries sustained by her in the road accident costs and interest against the petitioner herein for the compensation. After trial, the MCOP was allowed on 01.12.2016 with proportionate 11.7.2013 till the date of deposit, which ought to have been within two of Rs.5.86.000/- payable with interest at 7.5% per annum from 11.7.2013 till the date of deposit, which ought to have been within two months. That for compliance of the order dated 1.12.2016 passed in MCOP No.3748/2013, my mother had filed E.P No.236/2019 before this Hon'ble Court and certain orders came to be passed. M/s VAT & LEGAL, Advocates & Legal Consultants having office at No.34. Lakshmi Enclave, Chevaliar Sivaji Ganesan Road, T.Nagar, Chennai had entered appearance and filed Vakalath on behalf of the Judgment Debtor (petitioner herein) when the known assets of the JD's in the new premises where he was currently residing was attached. For non-filing of the Counter in the E.P No.236/2019 an ex-parte order was passed against the Judgment Debtor (petitioner herein) on 22.2.2021. On 22.3.2021 the Judgment Debtor (petitioner herein) has filed 3 Petitions viz.

M.P No.1/2021 in E.P No.236/2019 to raise the ex-parte order of attachment dated 22.02.2021 made in EP No.236/2019,

M.P No.2/2021 in E.P No.236/2019 No.3748/2013 to set aside the ex-parte order of attachment in MCOP dated 22.02.2021 made in E.P. No.236/2019.

M. P No.3/2021 E.P No.236/2019 in MCOP said petition filed to set aside the ex- until the disposal of the s No. 3748/2013 to stay of all proceedings in EP No.236/2019 Ex parte decree dated 1.12.2016 in MCOP No. 3748/2013 along with a Counter Statement in EP No. 236/2019 dated 22 03 2022

On 27.08.2021 a common Counter Affidavit on behalf of the Decree Holder was filed.

On 04.10.2021. MP Nos 1 and 2 of 2021 were allowed on certain conditions and MP No. 3/2021 was dismissed on the same day by this Hon'ble Court.

The order is extracted herein below:

a) The Judgment Debtor shall represent the returned petitions in MCOP No.3748/2013 on or before 20.10.2021 along with the Counter in MCOP No.3748/2013 leaving no space for any further defects.

b) The Judgment Debtor shall file an affidavit on or before 20.10.2021 before this court that the Judgment Debtor will not seek any adjournment either in the EP proceedings or in any incidental or other proceedings connected to with. If the Decree Holder is ready to proceed with the same,

c) The Judgment Debtor shall also file an affidavit on or before 20.10.2021 stating that his permanent address till the conclusion of all proceedings and his counsel address shall be the address for service till the conclusion of all proceedings including all incidental or other proceedings. d) If the above conditions are not complied with, the MP Nos. 1 & 2 of 2021 shall be automatically dismissed.

On 21.10 2021, this Hon'ble Court has allowed the M.P No. 1/2021 and MP No.2/2021 since the petitioner herein (JD) has complied with conditional order dated 01.11.2021 passed in MP No. 1/2021 and M.P No.2/2021.

The matter had been referred to Lok Adalat for to pay a reasonable compensation settlement talks. In the 'Lok Adalat both parties appeared in person but, the matter has not been fully settled though the petitioner herein (JD) seeing the health condition of my mother agreed, while the matter was thus pending in the above E.P. the respondent Mrs. Vibhasethi his mother has passed away on 4.2.2022 This was during the Corona lock down The death of the Decree Holder has been intimated to this Hon'ble Court on 17.6.2022 by way of a Memo enclosing the computerized original copy of the Death Certificate On perusing the same, this Hon'ble Court has directed to produce the Legal Heir Certificate also. After a severe follow up. the computerized Legal Heir Certificate of my mother was issued by the Tahsildar of Mylapore Taluk only on 03.07 2023. The Legal Heir Certificate of the respondent was digitally signed and uploaded in the official web site on 3.7.2023. Though he was following up regularly. He was not aware of the same It has come to his knowledge very later Immediately the respondent contacted my counsel and my counsel in turn filed

3 petitions, vide

a) E.A. No.4/2024 in E.P No.236/2019 to condone the delay of 885 days in filing the petition to set aside the abatement caused on the death of the deceased Decree Holder.

b) E.A. No.5/2024 in E.P No.236/2019 to set aside the abatement caused on the death of the deceased Decree Holder on 4 2 2022.

c) E.A. No.6/2024 in E.P No.236/2019 to permit the petitioner to bring on record the LR's of the deceased Decree Holder viz., (i) Muneer Qureshi, husband, aged about 68 years, (ii) Heir Seth, son, aged about 28 years and (ii) Fanish Sethi, son, aged about 25 years (myself) in the E.P No.236/2019 in MCOP No.3748/2013 dated 01 12.2016. A common Counter in the above E.A was filed on behalf of the petitioner herein on 30.12 2024 and is still pending for enquiry. The petitioner herein had chosen to file MP. No.4 of 2025 in M.P No.2/2021 to condone the delay of 525 days in filing the restoration petition to restore the M.P No.2/2021 in MCOP No.3748/2013 which was petitions viz: (1) to restore the M.P No.2/2021 which was dismissed on dismissed on 27.6.2023. Similarly the petitioner had filed three other 27.6.2023, (ii) to condone the delay of 844 days in filing the impleading petition to implead the LR's of the deceased Mrs. Vibhasethi in M.P No.2/2021 which was dismissed on 27.6.2023. (iii) to implead the LR's. of the deceased Mrs. Vibhasethi in MP. No.2/2021 which was also dismissed on 27.6.2023 are pending for numbering. The petitions filed in MP1&2 of 21 id vague similarly these petitions are also vague without merits.

The reason for the dismissal for the last three hearings of MP No.2/2021 in MCOP No.3748/2013 is given below

O.p No	Hearing Date	Purpose	Next Hearing
OP 3748/13	18.02.2023	M.p No. 2/21. Steps for petitioner, call on 23.03.2023.	23.03.2023
OP 3748/13	23.03.2023	MP. No. 2/21, Steps for Petitioner. No representation call on 27.06.2023.	27.06.2023

OP 3748/13	27.06.2023	MP. no. 2/21 NO representation from the petitioner/ respondent. called absent. Hence this petition is dismissed for default. No Costs.	
------------	------------	--	--

'A' diary proceedings, he understand that because of 'not taking steps' and continuous 'absent' from the side of the petitioner, the M.P No.2/2021 was dismissed. The petitioner's sole intention is to prolong and confuse this Hon'ble Court as well the opposite side. The affidavit and petition filed in M.P No.4/2025 in M.P No.2/2021 in MCOP No.3748/2013 may be dismissed. It is pertinent to point out that even though the petitioner (JD) has represented in MCOP No.3748/2013 along with the Counter Affidavit on or before 20.10.2021. The order Passed in MCOP No.3748/2013 dated 1.12.2016 has not been set aside till date. Further, it is not out of place to mention that when the respondents mother was alive the said met the respondents mother during the Court hearing and on seeing her condition, he agreed to compensate her reasonably. It is further submitted that after mother's death, the petitioner herein reneged his promise and undertaking. It will be impossible to tender any fresh evidence and then to face cross-examination about the accident as my mother Only who faced the accident has passed away. The respondent was a minor at the time of accident his father is too aged his a elder brother is a chronic user of certain substances and in no condition to come to the Hon'ble Court.

3. No oral or documentary evidence on both sides.

4. POINTS FOR CONSIDERATION:-

Whether the petitions have to be Allowed or not?

5. POINT:-

Heard both sides, these are two petitions filed by the respondent in the main MCOP 3748/2013, seeking to condone delay of 525 days in filing restoration petitions to restore the petitions filed in MP 1&2 OF 2021 to condone delay of 1511 days under section 5 of limitation Act and restore the petition filed by him to set aside the exparte award in M.P 1 which was dismissed for default on 27.6.23. And the same is contested by the respondents who are added as respondents without filing any impleading petition. The petitioner's sole intention is to prolong and confuse this Hon'ble Court as well the opposite side. And also mentioned about the various demeanor of the petitioner to drag on the matter as mentioned in their counter.

Therefore from the file of this court when the proceedings are gone through, it is found that the claim petition was filed by original victim one Vibhasethi in the year 2013 against the petitioner seeking compensation for the accident alleged to be occurred on 19.02.2013 addressing to the petitioners address Nungampakkam, Chennai. But as the summons returned as left, it is found on permission substituted service paper publication was ordered and as the petitioner did not turn up an exparte award was passed only on 1/12/2016 and it is found though the Award was passed on 1/12/2016, the claimant had filed the execution petition only in the year 2019 after tracing out the new address of the petitioner herein at

Thiruvananthapuram chennai address. And it is found from records E.P summons through court and private notice by DH also not served on the petitioner/JD even at his new address and that summons returned as unclaimed and door locked this time, the court notice found to be stuck on the door also, inspite of it the petitioner did not appear to contest E.P and so on request for substituted service, publication ordered and effected and only after that the petitioner appeared through his counsel who filed vakalat on 19/12/19. But even after several hearings the petitioner did not file his counter and he was set ex parte on 22.2.21, nearly after a year attachment was ordered, immediately the petitioner had filed 3 petitions in MP1 to MP3 of 21, to set aside ex parte order passed in E.P against him, to raise the attachment order and one to stay further proceedings in Execution petition. And from the orders passed in the three petitions it is found this Tribunal passed order that it is of the view that the MP No.1 and 2 of 2021 shall be allowed subject to adhering to the following conditions: "The judgment debtor shall represent the returned petitions in MCOP No.3748 of 2013 on or before 20.10.2021 along with the counter in MCOP No.3748 of 2013 leaving no pace for any further defects. The judgment debtor shall file an affidavit on or before 20.10.2021 before this court that the judgment debtor will not seek any adjournment either in the execution proceedings or in any incidental or other proceedings connected to with, if the Decree Holder is ready to proceed with the same. The judgment debtor shall also file an affidavit on or before 20.10.2021 stating that his permanent address till the conclusion of all proceedings and his counsel address shall be the address for service till the conclusion of all proceedings including all incidental or other proceedings. If the above conditions are not complied with, the MP Nos. 1 and 2 of 2021 shall be automatically dismissed. In view of the above order, the MP No 3 of

2021 is hereby dismissed. For reporting compliance call on 21.10.2021”. So from the orders in MP 1 to 3 of 2021, the petitioners had filed 2 applications namely one under section 5 of the limitation Act and another under Order 9 Rule 13 of CPC in M.P 1 &2 of 2021 in MCOP 3748/13 seeking to condone delay of 1511 days that is more than 4 years and odd, in filing petition to set aside the award passed against him on 1/12/2016. and the same was returned on 22.9.21 with an adjudication “Earlier these applications were returned for want of counter to be filed with the applications These applications were represented that the service of notice on the petitioner was not completed for want of address and the service on the petitioner was completed only on substituted service While representing the petitions in respect of filing the counter, it is stated that the certified copies could not be applied since no vakalath has been filed in the main OP and in the absence of the copy of the petition, the question of filing the counter does not arise This Tribunal has perused the records and it seems that the court notice taken on the petitioner in the main OP was unserved since the petitioner has vacated his residence at Nungambakkam Hence the notice on the petitioner in the main OP was not taken to a wrong address and it was taken to the last known address. Hence the petitioner could not complain about non service of notice on him in the main OP. These petitions came to be filed on 22 03.2021 and if the petitioner is really interested in pursuing the petitions, he can very well represent the petitions along with the counter by filing copy application for certified copies along with the vakalath and if he has done so, by this time he would be in a position to prepare the counter with the aid of the documents. But the petitioner instead has chosen to take a stand as if the situation to file the counter does not arise since the main OP, he was not set exparte for want of filing counter Hence the contention of the petitioner appears to

be dragging on the case This Tribunal being a institution to enforce the benevolent legislation cannot turn into a blind eyes and took the petitions for cognizance without counter Hence these petitions are again returned by making it clear that any representation in future will not be entertained without a counter.” and it is found that it was represented with counter only on 5.10.21.By the time on joint memo in EP236/19, the matter was sent for negotiating terms of settlement ,and as reported not settled the same was posted for enquiry on 17/12/21, but pending enquiry the DH died and the EP and the MPs 1&2 of 21 was pending to take steps for the deceased claimant who died pending proceedings. And it is found no notice was given to the DH counsel to produce the particulars of the legal heirs of the deceased claimant but the *M.P 1 & 2 of 2021 were simply left to be dismissed for default for not filing steps. It is pertinent to note here that the petitioner ought have filed a notice to the claimants advocate or to the legal heirs of the deceased claimant to produce details of legal heirs and filed an application seeking time to produce the steps or as soon as the legal heirs produced the details of death of decree holder in the E.P at least which is reasonable and ought have proved the petitioner was bonafide. But again after a delay of 525 days that is after more than a year it is found this petition is filed by the petitioner to restore the petitions in MP1&2 of 2021.And again it is found the petitioner had filed petition to restore the petition in MP1/21 only and not for MP2/21 and 2 petitions under sec 5 to excuse delay in filing the petitions to restore the Mps 1 & 2 of 2021 and also it is found that when MPS 1&2 of 2021 were dismissed for default for reason of not filing the legal heirs impleading petition these three petitions were filed without the steps for which the petitions to restore above mentioned Mp’s were dismissed.*

So from the beginning the petitioner either followed a wrong procedure as pointed out by the respondents and blamed others for his wrong when in MCOP 3748/2013 the notice was to his previously resided address it was returned as left automatically substituted service lies then next option is publication which was rightly effected by the claimant as it was not taken to wrong address it was taken to last residing address. And even after appearance of advocate is EP he blames the DH stating he took notice to wrong address knowing well its not the petitioners address without taking steps to setaside the award passed against him and only on direction of the Tribunal he filed counter in main OP along with setaside petition and represented the petition. And it is pertinent to note here that this petition is filed from his coimbatore address which shows that petitioner is giving various addresses and misleading the claimants and the court. If he is in coimbatore there is no explanation why he want to raise the attachment of properties in chennai Address ,which all shows that petitioner had not come to court with clean hands as pointed out by the respondents. Therefore from the above acts of the petitioner it is found that the petitioner is not interested in conducting the case but only want to drag on the matter .If only the petitioner was bonafide he who admitted the occurrence of Accident ought have reported the same to the concerned police immediately giving his correct address at least when his address is changed and ought have quashed the FIR filed against him and final report pertaining to the FIR is also not produced .And nothing was done on his side ,even after the award is passed. And considering the fact that nearly more than 5 years past and the original claimant is also no more as pointed out by the respondents when question of negligence has to be decided she is the one who can actually depose the negligence. Therefore considering the demeanor of the petitioner from the

beginning through out this Tribunal cannot turn blind eyes to such acts of the litigants and it is held that petitioner is not entitled to any relief as prayed for. Thus for the above discussed reasons both the petitions are dismissed.

6. RESULT:-

In the result the petitions in MP No.3 & 4 of 2025 are dismissed. No costs.

Directly dictated to the typist, directly typed by her, corrected in the computer and pronounced by me in the open court in this the 28th day of August 2025.

II Judge
Court of Small Causes Chennai.

Both sides Witnesses: Nil.

II Judge
Court of Small Causes Chennai.