

**IN THE COURT OF JUDICIAL MAGISTRATE, GUDIYATTAM,
VELLORE DISTRICT**

Present: R.Saranya, B.A., LLB., (Hons), LLM

Judicial Magistrate, Gudiyattam.

On Monday, this 06th day of October, 2025

CMP No.1493/2023

in

MC No.14/2009

Madhubabu, age-57, S/o. Thulasiraman,
No.51, Thiruvalluvar Street,
Meenakshi Amman Street,
Gudiyatham, Vellore District.

.... Petitioner

//Vs//

1. Renuka, age-53,
W/o. Madhubabu.
2. Divyadharshini, age-21,
S/o. Madhubabu.
No.151/119, Thankam Nagar,
Main Road, Gudiyatham,
Vellore District.

.... Respondents

This petition is coming before me on this 06-10-2025 for final disposal in the presence of the counsel for the Petitioner Mr.A.Durairaj.,BA.,BL., and in the presence of Learned Counsel for Respondent Mr.B.Rajanbabu.,MA.,BL., and

having perused materials placed on record and having heard both side arguments, this court delivers the following:

ORDER

This petition has been filed under section 5 of the Limitation Act to condone the delay of 294 days in filing the set aside petition.

1. BRIEF AVERMENTS OF THE PETITION.

It is submitted that the petitioner herein is the respondent in CrI MP No. 4142 of 2018. The petitioner is the Husband of the 1st respondent and father of the 2nd respondent herein. It is submitted that the 1st respondent filed an application in CrI.MP 4142 of 2018 in MC.No.14 of 2016 and the petitioner was set ex-parte. The absence of the petitioner was due to ill-health and the Counsel Mr.D.Selvam was passed away on 28-03-2022 and so he was unaware of the stage of the case. It is further submitted that the petitioner also filed CT Scan report to show that his non-appearance is neither wilful nor wanton and further stated that he has good opportunity to win the case. Unless the delay is condoned, the petitioner will be put to serious loss and hardship. Thus, prayed to condone the delay of 294 days in filing the set aside ex petition.

2. BRIEF AVERMENTS OF THE COUNTER:

The respondents submitted that the petitioner has full knowledge of the CMP No.4142 of 2018 and the order was passed on 29-04-2022 itself. The petitioner has come up with this petition after 10 months to drag on the proceedings. The petitioner has not given a valid explanation for condoning the delay. It is highly

devoid of merits. There were no reasons given either in form or in substance and hence this petition is not maintainable.

Whether the delay of 294 days in filing the set aside the ex-parte petition is liable to be condoned?

Both sides counsels placed their submissions to substantiate their case.

3. DISCUSSION AND DECISION:

The learned counsel for the petitioner submitted that the 1st respondent wantonly deserted him and filed MC No.14 of 2016. The appeal filed by him against the MC No.14 of 2016 was dismissed by the appellate court. And the revision filed by him against Crl MP No.407 of 2016 was also dismissed. Now when the 1st respondent filed petition for the enforcement of maintenance order Crl MP No.1493 of 2023, this petitioner remained ex parte and exparte order passed. Further it is submitted that delay in filing the set aside petition. The petitioner has stated that the delay is neither willful nor wanton. Unless the delay is condoned the petitioner will be put to irreparable loss. Therefore, he prayed to allow the petition.

4. To the contrary, the learned counsel appearing for the respondents stated that the petitioner has not given a valid explanation for condoning the delay. Thereby, the petition is devoid of merits and liable to be dismissed.

5. Heard the rival contentions put forth by both side counsels. Perused the records available before this court. By considering the nature of the application which has been filed to condone the delay in filing a petition to set aside the ex-parte order. This court is of the view that unless this petition is allowed, the petitioner will be

put to irreparable loss and much hardship. Further it has been reiterated by the Hon'ble Apex court that liberal view has to be taken while dealing with this kind of application. Therefore, in the interest of justice and to avoid multiplicity of proceedings this court is of the view that one more opportunity to be granted to the petitioner by condoning the delay. However, for the hardship caused to the respondents, and the Maintenance case is of the year 2016, this court is inclined to allow this petition on a condition that the petitioner shall pay a cost of Rs. 10,000/- to the respondents.

This order is dictated by me to the Steno typist, corrected and pronounced by me in open court on this the 06th day of October 2025.

//True Copy//

Judicial Magistrate,
Gudiyatham.