

**ORDER ON I.A.II FILED BY THE PETITIONER**  
**UNDER SECTION 151 OF CPC**

The learned counsel for the petitioner filed I.A.II on the above noted provision to stay the operation of execution of the judgment and decree dated 22.11.2022.

In the affidavit it is sworn that the respondent has filed O.S.No.130/2022 before this court for the relief of specific performance of contract alleging that the defendant has executed agreement in favour of the plaintiff. The said suit was decreed in the absence of defendant/petitioner. The judgment and decree dated 22.11.2022 by this court will cause hardship to the defendant/petitioner because suit summons was not served upon him and it was decided in the urgency of defendant. Suppose order of execution of judgment and decree is not stayed, it will definitely cause irreparable loss and injury to the defendant/petitioner. The respondent/plaintiff is waiting to take advantage of exparte judgment for execution. Hence, he prays to stay the operation of execution of judgment and decree.

Per contra, the respondent/plaintiff filed objections to the main petition and adopted the same as objections to I.A.I also. According to him, the facts mentioned in the affidavit are imaginary

facts. Summons of that suit was duly served upon the defendant. However, the defendant willfully did not appear in the pretext of ill-health but he has not described the nature of ill-health that he stated to have been suffered during that particular time. The plaintiff/respondent further explained that suppose execution of judgment and decree is stayed it will definitely cause much hardship to her. Hence, prays to reject the application.

Heard both sides.

Main petition filed under Order IX Rule 13 C.P.C. Now the defendant/petitioner prays to stay the operation of judgment and decree. His allegation that the suit was decided in his absence and suit summons was also not served. The provision of Order IX Rule 13 C.P.C. provides chance to the defendants to challenge the exparte judgment. Therefore, exparte judgment can be challenged by the defeated party in the same court where it was decided. Suppose the judgment and decree of O.S.130/2022 is not stayed the petitioner will lose the purpose of filing of this Miscellaneous Petition. The Rule of law that, every available chance has to be provided both parties to decide a matter properly and effectively. Suppose the judgment and decree is not stayed the plaintiff will take the advantage of the order to execute such order hurriedly. Hence, the following:

**ORDER**

I.A.II filed by the petitioner under Section 151 of C.P.C. is allowed. The judgment and decree of O.S.130/2022 dated 22.11.2022 is hereby stayed.

For enquiry of the petitioner, call on 09.08.2024.

Senior C.J. & JMFC.,  
Nanjangud.

22.06.2024