

IN THE COURT OF MUNSIFF, KOTHAMANGALAM

Present: Sri Ganesh Kumar M S, Civil Judge (Junior Division)

Monday, the 18th day of August, 2025/27th Sravana 1947

EA No.07/2025 in EP No.188/2024 in ARC No. 451/2021

Petitioners/
Judgment
Debtors:-

- 1 Chikku Sunil, aged 29 years, D/o. Sunil Issac,
Thekethottiyil House, Paingottoor Kara, Kadavoor
Village, Kothamangalam Taluk.
- 2 Sunil Issac, aged 54 years, S/o. Issac,
Thekethottiyil House, Paingottoor Kara, Kadavoor
Village, Kothamangalam Taluk.
- 3 Sophy Sunil, aged 51 years, W/o. Sunil Issac,
Thekethottiyil House, Paingottoor Kara, Kadavoor
Village, Kothamangalam Taluk.

By Advs. M/s. Jijo Jospeh and Eldhose Varghese.

Respondent/
Decree Holder:-

The Kadavoor Service Co.Op Bank Ltd No.1882,
represented by its Secretary, Nominee Johns, W/o.
Biju Thomas, Chettiyamkudiyil House, Paingottoor
Kara, Kadavoor Village, Kothamangalam Taluk.

By Advs. M/s. Gigi Peter, Sidharth S Nair.

This petition is coming on for final hearing on 31.07.2025 in the presence of counsel for both sides and on 18.08.2025 the court passed the following :-

ORDER

1. The petition is filed by the judgment debtors to set aside the ex parte order dated 15.11.2024 under section 151 of CPC,1908.

2. **The averments contained in the petition, in brief, are as follows:-** The petitioners are the judgment debtors in the above case. They received notice as per Order XXI Rule 22 of CPC. The bank assured that they will not proceed against the petitioners herein. Hence, they did not appear before the court and thus the court has passed an order setting them ex-parte on 15.11.2024. The ex-parte order is liable to be set aside, in the interest of justice. Hence, the petition.

3. **Per contra, the decree holder filed counter affidavit inter alia contenting as follows:-** The petition is not maintainable either under law or on facts. The petition is filed after 30 days from the ex-parte order. As per Order XXI Rule 106, the application to set aside the ex-parte order shall be filed within 30 days from the date of the order. The present petition is filed after the lapse of 30 days from the

aforesaid order. Hence the petition is liable to be dismissed.

4. From the above, the following points came up for consideration:-

- I. Whether the petition is maintainable or not?
- II. What shall be the order?
- III. Reliefs and costs?

5. Heard and perused the records.

6. **Point Nos.I and II**:- For the sake of brevity and convenience these points are considered together. The learned counsel for the petitioner argued that the petitioners were set ex-parte on 15.11.2024. He then argued that the period of limitation contained in Order XXI Rule 106 is not applicable in this case. He stated that in an execution petition the court has no jurisdiction to set the judgment debtors ex-parte. Instead, the court can proceed in the absence of the judgment debtors. In order to buttress his argument, he relied upon the decision of Hon'ble High Court of Kerala in the case of **Appu v. Surendra Swami** reported in **2011(4) KLT 494**. Hence, he urged to

allow the petition.

7. Per contra, the learned counsel for the decree holder argued that the petition is filed after the lapse of 30 days as is envisaged under Order XXI Rule 106. Hence, he urged to dismiss the petition.

8. In order to appreciate the rival contentions raised by the learned counsels, it is profitable to refer to the following decisions:-

9. In the case of **Chellamma v. Somakumari and others** reported in **2015(5) KHC 737**, the Hon'ble High Court held that when the execution petition is posted for taking steps before a day fixed for hearing, it is not covered by Rule 106 of Order XXI. It was further held that the consequences of non appearance of parties on any such day before the day fixed for hearing are not provided under Order XXI. The Hon'ble Court went on to say that those case are covered by the inherent powers of the court which are saved under section 151 of CPC. The court held that for filing application under section 151 CPC, no period of limitation is provided under the CPC and thus article 137 which provides for a period of three years of limitation would come

into play.

10. Similarly, in the case of **Radhakrishnan v. State of Kerala** reported in **2006(1) KLT 28**, the Hon'ble High Court held that, when an execution application is dismissed for default for non appearance of decree holder on the day not fixed for hearing and on the day specifically fixed for put up with back records, the said dismissal is not under Order XXI Rule 105 of CPC and thus the period of limitation as is envisaged under Order XXI Rule 106 is not applicable. Further, it was held that in such cases, the court can restore the application by invoking the inherent power under section 151 CPC.

11. In **Damodaran Pillai and others v. South Indian Bank limited** reported in **2005(4) KLT 192**, Hon'ble Apex Court held that, when an application is dismissed under Rule 105, the starting point of limitation for filing the restoration application would be the date of order and not from the date of knowledge. It was further held that the same shall be filed within 30 days from the date of order.

12. Thus, the crux of the aforesaid decisions is that when an

application is dismissed under Rule 105 or when the judgment debtors is set ex-parte on the date fixed for hearing under Rule 105, the period of limitation for restoring the EP or setting aside the ex-parte order as the case may be, shall be 30 days from the date of order as per Order XXI Rule 106(3) of CPC, 1908. In the case in hand, the judgment debtors received Order XXI Rule 22 notice and failed to appear on 15.11.2024. On 15.11.2024, the EP was posted for appearance of JD and for hearing on EP. Since, they didn't turn up on that day, they were set exparte. Hence, it is axiomatic that the period of limitation to set aside the exparte order is 30 days from the date of order and it is not in accordance with article 137 of limitation Act,1963. In the case in hand, the application seeking to set aside the exparte order was filed by the petitioners only on 30.07.2025, which is clearly after the lapse of 30 days from the date of order. Thus, it is clear that the application is hopelessly barred by law of limitation. Thus, the application is liable to be dismissed.

13. An interesting argument was mooted by the learned counsel

for the judgment debtor to the effect that the executing court has no jurisdiction to pass an order setting the judgment debtors exparte. It is pertinent to note that Order XXI Rule 23 says that when the judgment debtors fails to appear on receipt of Rule 22 notice, the court shall order the decree to be executed. Similarly, on a bare reading of Order XXI Rule 105, it is clear that on the date fixed for hearing on EP, if the judgment debtors fails to appear, the court may hear the execution application exparte. Thus, it is clear that these statutory provision empowers the executing court to set the judgment debtor exparte on his failure to appear before the court on the date fixed for hearing. Thus, the contention of learned counsel for the judgment debtors that the court has no jurisdiction to set the judgment debtors ex-parte is found to be unsustainable.

14. Point No.III:- The upshot of the above discussion is that the petition is not maintainable and thus it is liable to be dismissed.

In the result,

The petition is not maintainable and thus dismissed.

1. The dismissal of the petition does not denude the petitioners from participating in the further proceedings in the execution application. It is made clear that the petitioners shall have the right to participate in the proceedings on receipt of Order XXI Rule 54 notice or on receipt of Order XXI Rule 66 notice.

2. No order as to costs.

(Dictated to the Confidential Asst., typed by her, corrected and pronounced by me open court on this the 18th day of August, 2025)

Sd/-

Ganesh Kumar M S
Civil Judge
(Junior Division)

APPENDIX: NIL

//True copy//

Id/-

Civil Judge
(Junior Division)

Civil Judge
(Junior Division)