

IN THE COURT OF THE SUB JUDGE, NEDUMANGAD

Present : Smt. Rajasree. C.R, Civil Judge (Senior Division)

On Saturday 4th April 2026/ 14th Chaithram 1948

I.A 1/2026 in CMA 6/2025

Petitioner/Appellants

1. Rajan, aged 44 years, S/o. Chettiyar, Sneha Mandiram, Karavalavu, Arasuparambu, Nedumangad Village, Nedumangad P.O., Nedumangad, Pin- 695541.
2. Sandhya, aged 40 years, D/o.Chandrika, Sneha Mandiram, Karavalavu, Arasuparambu, Nedumangad Village, Nedumangad P.O., Nedumangad, Pin- 695541.

(By Adv. Sri.V.A. Baburaj and Adv. Govind. G)

**Counter petitioners/
Respondents**

1. K. Vidhyadharan, aged 72 years, S/o. Kochuraman from 'Divyaramam', Kadavattaran, Neyyattinkara, Now residing at "Divyaramam, Karavalavu, Arasuparambu, Nedumangad Village, Nedumangad P.O., Pin- 695541.
2. Vidyanathan, aged 77 years, S/o. K.K. Maniyan, residing at Thoppil Veedu, Kanavila Road, Pettah, Palkulangara Muri, Palkulangara Village, Pettah. P.O.

(No Vakalath filed)

This petition having been finally heard on 01/04/2026 and the court on 04/04/2026 passed the following:

ORDER

This application is filed under Order XLI Rule 5 of the Code of Civil Procedure, 1908.

2. **Petition averments, in brief, are stated as follows:-** The petitioners are the first appellants in this case. The appeal is preferred against the order dated 20.02.2025 in OS 478/2014 of the Court of Additional Munsiff, Nedumangadu. The defendants were set ex parte by the trial Court and the suit was decreed on 25.06.2019. The defendants filed a petition to set aside the ex parte decree and to restore the suit. The trial Court has dismissed the application on 20.02.2025. This appeal is preferred challenging the order of dismissal of the application filed under Order 9 Rule 13 of the Code of Civil Procedure, 1908. The respondents are taking hasty steps to execute the decree. EP No. 84/2020 is filed by the respondents and the same is posted to 26.03.2026. So it is highly necessary to stay the execution proceedings. If the execution petition is not stayed, irreparable injury will be caused to the appellants. Thus, this application.

3. No written objection seen filed by the respondents.

4. Heard the counsel for the petitioners and the respondents.

5. This application is filed by the petitioner to stay the proceedings in EP.84/2020 till the disposal of the Civil Miscellaneous Appeal. The averments in the petition would go to show that the petitioner had preferred an application to set aside the ex parte decree dated 25.06.2019 and the trial Court has dismissed that application on 22.02.2025. This appeal is preferred challenging the order of the trial Court dismissing the application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908. The affidavit filed by the petitioner would disclose that the respondents are taking hasty steps to get the decree executed and EP No. 84/2020 is posted to 26.03.2026. Even at the time of hearing the learned counsel for the respondents submitted that execution petition is pending before the trial court. At this juncture, let me consider Order XLI Rule 5 of the Code of Civil Procedure, 1908 which deals with the stay of proceedings under a decree or order appealed from on the grounds stated therein. On perusal of sub section 3 of Order XLI Rule 5, it is seen that no order for stay of execution shall be made under sub section 1 or under sub section 2 of Rule 5 unless the court is satisfied that substantial loss may result to the party applying for stay of execution and that the application has been made without unreasonable delay. In this case, there is no delay in preferring the application. On perusal of the affidavit it is evident that if further proceedings in execution petition EP.84/2020 of the Munsiff Court, Nedumangad is not stayed then substantial loss will be caused to the appellants. Having satisfied that the petitioners have satisfied this court that substantial loss is likely to be caused in

their favour and that the application is filed without unreasonable delay, I am of the view that this application can be allowed.

In the result, this application is allowed. Further proceedings in EP.84/2020 of the Court of Munsiff, Nedumnagad is stayed till the disposal of this Civil Miscellaneous Appeal.

(Prepared through adalath AI, corrected and pronounced by me in open court on this the 4th day of April, 2026).

Rajasree.C.R,
Civil Judge(senior Division).

Appendix: NIL

Civil Judge, Senior Division

Typed by :BR

Compd by :RPN