

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR.**Present: **N.Renuga., B.A., B.L.,**

District Munsif, Sulur

Friday the 30<sup>th</sup> day of June 2023**EA.No.1/2023****in****E.P.No. 10/2022****in****O.S.No.324/2017**

Rasu @ Paramasivam

S/o.Subramaniam

... Petitioner/Respondent/JD No.2

/ Vs /

P.Eswaran

...Respondent/Petitioner/DH

This Petition is coming on 24.04.2023 this day for final hearing before me in the presence of Thiru.S.Sampath, Advocate for the Petitioner/JD and of Thiru.K.Shanmuganathan, Advocate for the Respondent/D.H, and on hearing submissions and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

**ORDER**

Petition filed under Order 21 Rule 105 and 106 and section 151 of CPC to set aside the exparte order dated 20.02.2023 passed against petitioner.

**1. The brief averments of the affidavit filed by the petitioner as follows:-**

1.1. The E.P.No.10/2022 was posted on 20.02.2023 for petitioner/JD appearance. On that day the petitioner was suffering from illness and constrained to take rest. Hence, he was not able to appear before this Hon'ble court on that day and due to his non appearance he was called absent and set exparte. The petitioner having valid defense on his part and he have every chance to defend the execution petition and succeed it. Hence, this petition.

**2. The brief averments of the counter filed by the Respondent as follows:**

2.1. The petition is false, frivolous, vexatious and not maintainable both in law and on the facts of the case. The respondent filed the above execution petition for

removal of encroachment and delivery of possession. The case was posted on 20.02.2023 for the appearance of the petitioner, he was suffering from illness and constrained to take rest and hence, he was not able to appear before this Hon'ble court are totally false. The petitioner did not produce any documents to show that he was not well and he was under rest.

2.2. When the case was posted for marking of documents and cross examination the petitioner was present and received the documents copy from this respondent in person. In this circumstance this petitioner patently lies before this Hon'ble court. The petition filed by the petitioner is nothing, but false and clear misleading of this court. In spite of sufficient opportunity given by this court, the petitioner did not come forward to pursue the case. Hence, he was set exparte. The petition is to be dismissed.

### **3. Point for Consideration:-**

Whether the petition filed under 21 Rule 105 and 106 and section 151 of CPC is to be allowed?

### **4. Points:-**

Heard learned counsel for both side heard.

4.1. The petitioner is the respondent in the main EP which is filed against him for arrest. The petitioner has set exparte for his non appearance on 20.02.2023 in the main EP the respondent as PW.1 and on examination of PW.1 chief the petitioner has in person appeared this court and got copies of chief examination and documents. On next hearing he has not present before this court to cross examined the PW.2. Hence on the day this court called the petitioner and set the petitioner as exparte. With in 30 days as per order 21 rule 5 of CPC the petitioner filed this petition to set aside the exparte order against him. The reason stated in the affidavit for his non appearance is sufficient hence in the interest of justice this court inclined to allow this application on cost.

***In the result, this petition will be allowed on payment of cost of Rs.1500/- to be paid by the Petitioner/Judgment debtor No.2 to the Respondent/Decree holder***

***on or before 14.07.2023. On failure this petition stands dismissed automatically.  
For compliance Call on 14.07.2023.***

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 30<sup>th</sup> day of June 2023.

District Munsif,  
Sulur.

**List of witnesses on petitioner side:-**

Nil

**List of documents on Respondent side:-**

Nil

District Munsif,  
Sulur.

14.07.2023

This Petition is coming on this day for final hearing before me in the presence of Thiru.S.Sampath, Advocate for the Petitioner/JD and of Thiru.K.Shanmuganathan, Advocate for the Respondent/D.H, and on hearing submissions and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

**ORDER**

Cost Rs.1500/- paid memo recorded. This petition is allowed.

Pronounced by me in open court this the 14<sup>th</sup> day of July 2023.

District Munsif,  
Sulur.

Draft/ Fair Order  
EA.No.1/2023 in  
E.P.No.10/2022 in  
O.S.No.324/2017  
Dated : 14.07.2023  
DMC, Sulur.