

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

**Present : Tmt.M.Santhosham., B.Sc., B.L.,**

**District Munsif, Sulur**

Thiruvalluvar year 2056 Visvvasu year, 29<sup>th</sup> day of Month of Purattasi

Wednesday the 15<sup>th</sup> day of October 2025

**EA.No.2/2025**

**in**

**E.P.No. 5/2024**

**in**

**O.S.No.1202/2017**

1. N. Ganesh

2. C. Antony

...Petitioners/ 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

/ Vs /

1. R. Celin Mary

2. A. Edward Daniel

...Respondents/Petitioner

This petition coming on this day for final hearing before me in the presence of Mr.S.Sampath, Advocate for the Petitioners and of Mr.S.Suresh, Advocate for the Respondents and upon perusing the records, and this court pronounced the following:

**ORDER**

Petition filed under Order 21 Rules 105 and 106 and Section 151 of CPC to set aside the exparte order dated 09.04.2025 passed against the Petitioners.

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

1.1. The above petition has been posted for hearing and appearance on behalf of petitioners on 09.04.2025. The 1<sup>st</sup> Petitioner suffered with illness and he was not able to appear before this court and engaging counsel to defend their case. Hence, the petitioners have been set exparte. The non appearance of petitioners is

neither willful nor wanton. In this circumstance the petitioners have filed this application to set ex parte order passed against the petitioners by this court on 09.04.2025. Unless the petitioners will be put into much loss and hardships. Hence, the petition is to be allowed.

**2. The brief averments of the counter statement filed by the 2<sup>nd</sup> Respondent and adopted by the 1<sup>st</sup> 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 petitioners are put to strict proof of all the allegations mentioned in the affidavit filed in support of the petition. The notes papers would reveal that for all the judgment debtors a memo was filed undertaking to file vakalath on 12.12.2025 and later on sought time to file the vakalath and as such on 09.04.2025 the petitioners/ 2<sup>nd</sup> and 3<sup>rd</sup> respondents were set ex parte. Hence, the deponent's contention that he was suffering from illness on 09.04.2025 is untenable.

2.2. Subsequent to filing of counter statement by the first judgment debtor the enquiry was heard and when it was posted for orders, the petitioners herein have chosen to file the present application on 2.09.2025 with malafide intention. The respondents have got their own suspicion about the signature available in the affidavit on account of the reason that the deponent is not at Coimbatore and at present he is Trichy and there is no chance for him to sign the affidavit. As per settled law, an application to set aside the ex parte order has to be filed within 30 days as per Rule 106(3) of Order XXI of CPC. In the present case, admittedly the petitioners remained ex parte on 09.04.2025 which is more than 30 days. Hence, the present application is barred by limitation. Hence, the petition ought to be dismissed.

3. No Witnesses were examined on either side, and no documents were marked as exhibits.

**4. Point for Consideration:-**

Whether the petition filed under Order 21 Rules 105 and 106 and Section 151 of CPC to set aside the exparte order dated 09.04.2025 passed against the Petitioners is to be allowed?

**5. Points:-**

5.1. The Petition affidavit, counter and the enquiry of both parties were carefully considered. Heard the counsels for both the parties. The Execution petition documents were carefully examined. The Execution petition is filed by the Respondents/Decree Holders for to send notice to the Judgment debtors directing them to vacate and deliver the vacant possession of the property and on their failure, to appoint a Court Ameen and order delivery of possession.

5.2. The petitioners stated that, on 09.04.2025 the 1<sup>st</sup> Petitioner suffered with illness and he was not able to appear before this court and engaging counsel to defend their case. Hence, the petitioners have been set exparte. The respondents objected that, As per settled law, an application to set aside the exparte order has to be filed within 30 days as per Rule 106(3) of Order XXI of CPC. In the present case, admittedly the petitioners remained exparte on 09.04.2025 which is more than 30 days. Hence, the present application is barred by limitation.

5.3. The original suit No.1202/2017 filed for the relief of Mandatory injunction and the Execution Petition filed for delivery of possession. Admittedly the petitioner has filed the application, to set aside the exparte order in period of 90 days. It is a settled law, and the Hon'ble Apex court in various cases filed that, parties must be given opportunity to prove their case. Therefore in the interest of justice and for effective adjudication, this court is inclined to allow this petition with cost.

*In the result, this petition will be allowed on payment of cost of Rs.1000/- to be paid to the Respondents/Petitioners/Decree Holders on or before 22.10.2025. On failure this petition stands dismissed automatically. For compliance Call on 22.10.2025.*

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 15<sup>th</sup> day of October 2025.

Sd/M.Santhosham  
District Munsif,  
Sulur.

**List of witnesses and documents on Petitioners side:-**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

Sd/M.Santhosham  
District Munsif,  
Sulur.

Draft/ Fair Order  
EA.No.2/2025 in  
E.P.No.5/2024 in  
O.S.No.1202/2017  
Dated : 15.10.2025  
DMC, Sulur.