

**IN THE COURT OF SUBORDINATE JUDGE,  
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,  
Subordinate Judge,  
Madurantakam.**

**Monday, this 30<sup>th</sup> day of March, 2026  
E.A No. 3/2026  
in  
E.A.No. 1/2025  
in  
E.P No. 20/2009  
in  
O.S No. 37/2006  
(CNR.No.TNCG13 – 000071-2009)**

M. Elumalai ...Petitioner/1<sup>st</sup> Respondent

..Vs..

1. N. Harikrishnan ...1<sup>st</sup> Respondent/ 2<sup>nd</sup> Respondent

2. M.Harikrishnan ... 2<sup>nd</sup> Respondent/Petitioner

This petition coming up for final hearing on 18.03.2026 in the presence of Mr.G.Pachaiyappan, Counsel for Petitioner/1<sup>st</sup> Respondent and Mr.V.Agoram, Counsel for the 1<sup>st</sup> respondent/2<sup>nd</sup>respondent, Mr.M.Tamilmaran, counsel for 2<sup>nd</sup> Respondent/Petitioner and having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

**ORDER**

This petition is filed by the petitioner under Section 115 of Civil Procedure Code to set aside the order passed in I.A No. 1/2025 dated 30.01.2026.

**2. Petition in brief:**

Petitioner filed an application in E.A 2/2025 to set aside the exparte order passed against him in E.A 1/2025. Counter also filed along with the application in I.A. No.2/2025. The application No.2/2025 was allowed by this Court on payment of cost of Rs.3000/-. This Hon'ble Court passed an order in I.A. No. 1/2025 on 30.01.2026 and it has been observed that the petitioner has not filed his counter and hence he was set exparte. But the petitioner filed his counter before this Hon'ble court along with set aside petition and the petition was also allowed, by this Hon'ble court.

Petitioner's counsel name was mentioned as R.S. Regnganathan in the order in I.A.No.1/2025, but the counsel Mr.G.Pachaiyappan was appeared on behalf of the petitioner/1st Respondent and he filed vakkalath and counter along with setaside application. It was omitted to be record in the above order passed by this court in I.A.No.2/2025.

Hence the petitioner files this petition for set aside the order passed in I.A No. 1/2025 dated 30.01.2026.

**4. Counter of 2<sup>nd</sup> respondent in brief:**

The respondent denies all the above said averments set out in affidavit and the grounds set up by the petitioner are not satisfied to allow the revision petition, further the revision grounds are not valid points to revoke order. The order passed is on merits, in any event if at all grounds, the petitioner ought to have field appeal alone. The revision will not applicable in the E.P proceedings. The petition is filed only to delay the matter and frustrate the respondents.

Hence this petition is liable to be dismissed with Costs under Sec.35(a) of C.P.C

5. No oral or documentary evidence adduced by both parties.
6. Heard both sides and perused the records.

**7. Point:**

***“Whether this application can be allowed?”***

This petition has been filed by the petitioner under Section 115 of the Code of Civil Procedure seeking to set aside the order passed by this Court in E.A. No. 1/2025 dated 30.01.2026 on the ground that the order passed in E.A. 1/2025 bears with wrong counsel name and that the order recites that the petitioner was *ex parte*, where he already filed his counter.

It is the specific case of the petitioner that he had entered appearance through counsel and had also filed vakalat along with a petition to set aside the *ex parte* order, accompanied by a counter in E.A. No. 1/2025. It is further stated that the said application in E.A. No. 2/2025 was allowed by this Court on condition of payment of costs of Rs.3,000/-. However, while passing orders in E.A. No. 1/2025, this Court has observed that the petitioner had not filed counter and was set *ex parte*, which according to the petitioner, is factually incorrect.

On perusal of the records, it is seen that the petitioner had indeed taken steps to set aside the *ex parte* order by filing appropriate application along with vakalat and counter, and the same was entertained by this Court in E.A. No. 2/2025 and allowed on payment of costs. Therefore, the observation made in the order dated 30.01.2026 in I.A. No. 1/2025 that the petitioner failed to file counter appears to be due to an omission in taking note of the subsequent developments and filings made on behalf of the petitioner.

Further, it is also brought to the notice of this Court that there is a discrepancy with regard to the name of the counsel appearing for the petitioner, which has not been properly recorded in the earlier order. Such omission, coupled with the non-consideration of the counter filed by the petitioner, has resulted in alleged prejudice to the petitioner.

But it is pertinent to note that the counter of this petitioner/1st respondent was nothing but replica of the counter of the 2<sup>nd</sup> respondent. Counsel for the petitioner/1st respondent nothing but the junior of counsel for the 2<sup>nd</sup> respondent. So, there cannot be any difference in the defence taken by the 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent in E.A 1/2025. No doubt that the ultimate defence of both respondents are one and the same. But this error cannot be a ground to set aside the entire order passed in the E.A 1/2025.

Further the alleged error cannot said to be error apparent on the face of the record to attract section 115 of Civil Procedure Code. But it can be held that it is only accidental omission, where section 152 of the code can be invoked. Hence this court concludes that the alleged error is not an error apparent on the face of the record and that it is only an accidental omission. No doubt that this Execution petition is pending for more than **15 years**. Considering the same, this court wants to mold the relief, where the relief granted under section 152 of Civil Procedure Code will be lesser relief, where this court by invoking power under section 151 of Code intends to amend the order passed in E.A 1/2025 to meet the ends of justice. No loss or prejudice will be caused to either parties if this court invokes power under 152 of Code instead of section 115 of Code. Hence this point is decided accordingly.

**8. Result:**

In fine this application is partly allowed and the order passed in I.A 1/2025 shall carry the following amendments.

1. In first page in para No.1, strike out the counsel name of 1<sup>st</sup> respondent “ R.S Ranganathan” and substitute “ G.Pachiyappan”
2. In first page strike out “1<sup>st</sup> respondent/respondent/judgment debtor was called absent and set exparte”
3. In heading of para 2, strike out “2<sup>nd</sup> respondent” and substitute “respondents”.
4. Strike out entire para 4 of the order.
5. Strike out para nos 5 to 8 and substitute para nos 4 to 7.
6. In para No.7 strike out “ 2<sup>nd</sup> respondent” whenever appears and substitute “respondents”. No costs.

Except for the above ordered corrections, the order in E.A 1/2025 shall remain unaltered.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 30<sup>th</sup> day of March, 2026.

Subordinate Judge,  
Madurantakam.

**Both sides Evidence and Exhibits: Nil**

Subordinate Judge,  
Madurantakam.

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**Fair / Draft order**  
**E.A No. 3/2026**  
**in**  
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**in**  
**E.P No. 20/2009**  
**in**  
**O.S No. 37/2006**  
**D.D: 30.03.2026**  
**Subcourt,**  
**Madurantakam**