

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

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

Monday, this 9th day of December 2024

E.A.No.1/2024

in

E.P.No. 19/2023

in

O.S.No.10/2010

(CNR.No.TNCG13 – 000283-2023)

Vengadachalopathy

...Petitioner/J.D./Defendant

..Vs..

Ramakrishnan

... Respondent/D.H./Petitioner

This petition coming up for final hearing on 27.11.2024 in the presence of Mr.B.Rajesh, counsel for petitioner, Mr.K.Ayyasamy, Mr.S.Jothi, and Mr.V.Mohanraj, counsels for respondent, 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 order XXI Rule 106 of CPC to set aside the exparte order dated 26.06.2024 passed against him.

2. Petition in brief:

Execution petition is filed by the respondent/decree holder to execute the decree and judgment passed in O.S.No.10/2010 on 16.12.2014. After decree during the month of August 2017 the petitioner had paid a sum of Rs.34,500/- to the respondent/decree holder by hand cash which was very well known to the respondent/decree holder. By deducting the amount a sum of Rs. 34,500/- paid the respondent/decree holder as per decree dated 16.12.2014 in O.S. No. 10/2010 the outstanding amount was a sum of Rs.3,68,000/- in which the amount a sum of Rs.1,50,000/- had paid by the petitioner on 20.02.2018 to the respondent/decree holder and the amount a sum of Rs.1,50,000/- had paid by him on 13.11.2018 to the respondent/decree holder and finally that on 16.03.2023 the petitioner had paid a sum of Rs.40,000/- to the respondent/decree holder which was acknowledged by respondent/decree holder.

While so from the date on 20.02.2018 the petitioner paid a sum of Rs. 3,40,000/- till date on 16.03.2023 out of the outstanding amount a sum of Rs. 3,68,000/-. As on 16.03.2023, the outstanding amount was only a sum of Rs. 28,000/- which also agreed by respondent/decree holder as the balance due. When the petitioner paid the amount a sum of Rs. 40,000/- as finally on 16.03.2023 to the respondent/decree holder he made assurance as the balance amount a sum of Rs. 28,000/- will be paid within one month to the

respondent/decreed holder. But due to his personal inconvenience he was not able to do that.

In the above circumstances the respondent/decreed holder has filed the above vexatious execution petition as against the petitioner for the decree amount together with interest at 6% per annum from the date of the decree to till the date of filing of the above execution petition. After receiving the amount a sum of Rs. 3,74,000/-, the respondent/decreed holder has no any locus standi to file the above execution petition for the decree amount together with interest at 6% per annum from the date of the decree to till the date of filing of the above execution petition.

While so the respondent/decreed holder is entitled for the balance sum of Rs. 28,000/- from the petitioner and apart from that he is not entitled any amount is claimed in the above execution petition. The acknowledgment of the respondent/decreed holder is misplaced and hence the petitioner could not able to file his counter. After passing of ex parte order, on diligent search the acknowledgment of the respondent/decreed holder is successfully found by the petitioner. Hence, now the petitioner files this application to set aside the ex parte order dated 26.06.2024 passed as against him. The petitioner has good case on merits.

Hence the petitioner files this application to set aside the ex parte order dated 26.06.2024 passed against him.

3. Counter of the respondent in brief:

This respondent denies the entire allegations in the affidavit petition as false except those that are specifically admitted herein and puts the petitioner to strict proof of each of the same.

Petitioner has not paid any amount to this respondent. The alleged payment of Rs.3,74,000/- mentioned in the affidavit petition is false and fraudulently invented by petitioner to evade the E.P. mentioned amount to the respondent. The respondent has not received any amount from the petitioner and not executed any acknowledgment as alleged in the affidavit petition. The alleged acknowledgment mentioned in the affidavit petition is false. No such acknowledgment of document is filed along with the petition.

Petitioner having received the notice in the execution petition and engaged a lawyer on 11.10.2023 and inspite of several hearings the petitioner has not filed his counter and on 12.6.2024 again changed the present counsel and even after that he has not filed his counter on 26.6.2024 and hence this Hon'ble court passed exparte order against him. The petitioner has not assigned any bonafide reason for non-filing of counter in the execution petition on 26.6.2024. Therefore, the petitioner fails to file counter on 26.6.2024 is willful and wanton and the same cannot be set-aside. The petitioner without paying any amount to the respondent has filed the present petition with false allegations to evade the E.P. amount. Absolutely there is no merits in the petition.

Hence the respondent prays for dismissal of the petition.

4. Heard both sides and perused the records.

5. Point:

“Whether this application can be allowed?”

Petitioner who is judgment debtor has filed this application to set aside exparte order passed against him.

It is alleged that the petitioner has paid amount to the respondent after decree and that due to non-availability of documents in proof of the same, he was unable to file counter and that there is only a sum of Rs. 28,000.00 alone due towards the execution amount.

Per contra the respondent defends that the petitioner didn't pay any single pie to him and that this application is only to drag on the proceedings.

On perusal of records though the petitioner has filed his counter for petition along with this application, no single document was produced which were alleged to be traced out by him in respect of part payment of execution amount. This would clearly shows that the reason that the petitioner in search of the documents is false and found for the application.

Next the petitioner entered appearance in the execution petition on 11.10.2023. In spite of adjournments granted by this court to 22.11.2023, 08.01.2024, 14.02.2024, 20.03.2024, 12.06.2024 and finally on 26.06.2024, the petitioner has not file his counter in execution petition. On 26.06.2024 the petitioner was set exparte as he fails to file his counter. This clearly shows that the petitioner has filed this application to protract the proceedings.

Anyhow the petitioner has every right to defend the petition for execution. No loss or prejudice will cause to the respondent if the execution petition decided on merits. So, there is no bar to allow this application. But for the lethargic attitude of the petitioner, that he himself admitted that he has to pay a sum of Rs.28,000.00 to the respondent and with an endeavour to dispose of the execution petition at the earliest as already one year gone, this court

inclined allow this application on conditions. Hence this point is decided accordingly.

6. Result:

In the result this application is allowed on conditions that,

- i)** the petitioner shall pay the admitted balance amount of Rs. 28,000.00 (Rupees Twenty Eight Thousand) towards the execution amount to the respondent on or before 16.12.2024 and
- ii)** the petitioner shall be ready with his enquiry on 17.12.2024 in the main execution petition as he defend the execution petition as discharge of decree amount.

Call on 17.12.2024.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 9th day of December 2024.

Sd/T.GANESH,
Subordinate Judge,
Madurantakam.

I. Petitioner side evidence and Exhibits : Nil

II. Respondents side Evidence and Exhibits : Nil

Sd/T.GANESH,
Subordinate Judge,
Madurantakam.

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