

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**
PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Thursday, the 22nd day of August 2024

E.A. No.1/2024

in

E.P. No.295/2023

Ramana Vivek,

through his Power Agent Tmt.Nalini.

... Petitioner /1st Respondent/Judgment Debtor

-Vs-

L.Krishnasamy

... Respondent/Petitioner/Decree Holder

This petition came on 7.8.2024 before this Court for final hearing in the presence of Thiru.K.Dhanabal, Advocate for the petitioner, and of Tvl. S.P. Balasubramaniam and R.Murugesh, Advocates for the Respondent and upon hearing the arguments on both side and on perusal of records, this Court delivers the following :

ORDER

1. This Petition is filed by the petitioner/Judgment debtor U/O.21, Rule 106 C.P.C.
2. The petitioner is the 1st Respondent/judgment debtor in the Execution Petition, which is filed by the Respondent / decree holder to recover the decree amount by attachment and sale of the property. The case was posted on 5.1.2024 for appearance. But the petitioner was out of station and the notice was received by her husband and so she could not appear on the said date. She was came to know about the exparte order after she came from out station. The absence was neither willful nor wanton and unless the exparte order passed against her on 5.1.2014 is set aside, irreparable loss and hardships would be caused to her. So she prays to set aside the exparte order passed against her on 5.1.2024.
3. The respondent has stated that the suit was filed by him for specific performance, but the court had ordered repayment of the advance amount with interest as an alternative relief. Accordingly, the E.P. was filed to recover the said decree amount by attaching and selling the property of the Judgment Debtor. Though notice was served upon to the husband, she did not appear on 5.1.2014 and so she was set exparte. The petition filed now is barred by limitation and the reason given for her absence is not acceptable. So he prays to dismiss the petition.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**
5. Heard both sides.
6. **POINT :**

The objection raised by the respondent is that the petition is not filed within the time and so it has to be dismissed. In this regard, it is found that the exparte order against this petitioner/judgment debtor was passed on 5.1.2024 and she was properly served notice upon her husband. It is not the case of the petitioner that she did not receive notice and she gained knowledge about the order only on the subsequent date. Therefore, the notice was properly served and the date for calculating the period of limitation has to be taken as the date of order namely 5.1.2024. As per Order 21 Rule 106 of CPC, an application to set aside the order has to be filed within 30 days from the date of Order ie., 5.1.2024. But this petition is filed on 5.2.2024. Hence, the respondent has objected that it is not filed within 30 days.

7. However, since the order was passed on 5.1.2024, the said date has to be excluded and the 30 days have to be calculated from the next day that is on 6.1.2024. Accordingly, the petition to set aside the Order passed on 5.1.2024 should have been filed on or before 4.2.2024. It is to be further noted that the day on 4.2.2024 happened to be a Sunday and a Court holiday. Therefore, the petition was filed on the

next working day namely on 5.2.2024. Thus it is held that the petition is filed within the period of limitation as specified in Order 21 Rule 106 of C.P.C.

8. The 2nd objection made by the respondent is that the reason given by the petitioner is not acceptable and that no details as to the place where she went or when she came back are not given in the petition. Since, the petitioner has filed the petition within time, there is no necessity to give the details of the place where she went and when she came to knowledge about the order. As already pointed out, the relevant date for calculating the limitation is 5.1.224, the date of the order. The petitioner has claimed that she was not in the Town on 5.1.2024 and so could not appear before the Court. Since, the petitioner was set *ex parte* on the 1st hearing itself, and the reason that she was not available in the Town is quite acceptable, this Court deems it appropriate that she must be given another opportunity to participate in the execution proceedings. It is needless to state that the decree is for recovery of money namely, the advance amount with interest and this Court further deems it appropriate that the petitioner shall be directed to deposit 25% of the E.P. amount into the Court as cost to allow this petition. It would also show the *bona fide* of the petitioner to conduct the execution proceedings promptly. Accordingly, it is held that the petition will be allowed on deposit of 25% of the E.P. amount within 15 days into the Court. This point is decided accordingly.

In the result, this petition will be allowed on deposit of 25% of the E.P. amount into the Court on or before 13.09.2024. Failing which this petition shall stand dismissed. Call on 13.09.2024.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 22nd day of August 2024.

Additional District Judge,
Dindigul.