

IN THE COURT OF THE SUBORDINATE JUDGE, SATHYAMANGALAM.

PRESENT: Tmt.K.S.Shabeena, B.A., B.L.
Subordinate Judge, Sathyamangalam.

Wednesday, the 22nd day of October 2025
(2056 Thiruvalluvarandu Visuvavasu varudam Iyppasi Thingal 05th day)

E.A. No. 4 of 2024
in
E.P. No.120 of 2019

G.Shanmugam

... Petitioner/Judgment Debtor

Vs.

M/s Sriram Transport Finance Company Ltd.,
Power Agent A.Sabarinathan

... Respondent/Decree Holder

This Execution Petition was came up for hearing before me on 22.10.2025 in the presence of Thiru.M.Kanthasamy, Advocate for the petitioner and Thiru.V.S.Avinasilingam, Advocate for the respondent and upon hearing the arguments on petitioner side and having stood over for consideration till this day, this court delivering the following...

ORDER

The present petition is filed by the judgment-debtor under Order XXI Rule 106 of the Code of Civil Procedure, 1908, read with Section 151 CPC, seeking to set aside the ex parte order passed against him on 18.12.2019 passed in the execution petition.

2.The gist of the Petitioner's Case as follows:

The present application has been filed by the Judgment Debtor/ the Petitioner herein under Order 21 Rule 106 CPC read with Section 151 CPC, seeking to set aside the ex parte order passed against him on 18.12.2019 in the above execution proceedings. The Petitioner contends that he was unable to appear in court on the specified date or instruct his lawyer because he did not receive any summons and was unaware of the case.

3. Gist of the Respondent's Counter as follows:

The Respondent/ Decree Holder has opposed the application, contending that the Petitioner had been granted multiple opportunities to appear and file his counter statement but failed to do so. Further, the Respondent emphasizes that the present application was filed after a delay of five years, he did not receive any summons and was unaware of the case.

4. Points For Consideration:

Whether the petitioner has established "sufficient cause" under Order XXI Rule 106 CPC to justify setting aside the order dated 18.12.2019 in the execution petition.

5. Discussion:

5.1. The present application has been filed by the Judgment Debtor/ the Petitioner herein under Order 21 Rule 106 CPC read with Section 151 CPC, seeking to set aside the exparte order passed against him on 18.12.2019 in the above execution

proceedings. The Petitioner contends that because he did not receive any summons and was unaware of the case.

5.2. The Respondent/ Decree Holder has opposed the application, contending that the Petitioner had been granted multiple opportunities to appear and file his counter statement specifically and 18.12.2019 but failed to do so. Further, the Respondent emphasizes that the present application was filed after a delay of four years, and no evidence has been filed to he did not receive any summons and was unaware of the case.

5.3. The Court has carefully considered the submissions and perused the records. The recent judgment of **Hon'ble Mr.Justice N.Sathishkumar, Madras High Court, C.R.P. No. 3400 of 2025 (dated 08.08.2025)** provides important guidance. In that case, it was observed that:

- i) The 30 day limitation under Order 21 Rule 106(3) CPC applies strictly to ex parte orders passed under specific provisions such as Order 21 Rule 105(2), and cannot be applied indiscriminately to all ex parte orders.
- ii) Delay beyond the prescribed period requires cogent justification, supported by documentary evidence, failing which the Court should not exercise its discretionary power to set aside an ex parte order.

5.4. Applying the above ratio to the present case, it is noted that although the Petitioner claims he did not receive any summons as a reason for non-appearance, he has failed to produce any oral or documentary evidence to substantiate his claim. In

execution proceedings, particularly under Order 21 CPC, Courts require tangible evidence to demonstrate that non-appearance was beyond the control of the party. Mere assertion of did not receive any summons, without proof, cannot be treated as sufficient cause.

5.5. Further, the petitioner has filed the present application five years after the ex parte order was passed. The law is well-settled that delay in approaching the Court under Order 21 Rule 106 must be promptly explained, and inordinate delay without justification militates against relief.

6. Finding:

While the Court recognizes its powers under Section 151 CPC to prevent miscarriage of justice, the absence of evidence, prolonged delay, and multiple prior opportunities to appear weigh heavily against the petitioner. Exercising judicial discretion judiciously, the Court finds no sufficient cause to interfere with the ex parte order.

7. 1. **In the result**, the application filed by the petitioner under Order 21 Rule 106 CPC and Section 151 CPC to set aside the ex parte order dated 18.12.2019 is hereby dismissed.

2. No costs are awarded.

Dictated by me to the Steno typist, typed by her in the Computer directly, corrected and pronounced by me in open court on this the 22nd day of October 2025.

Subordinate Judge,
Sathyamangalam.

Petitioner's side witness and documents: NIL
Respondent's side Witness and documents: NIL

Subordinate Judge,
Sathyamangalam.