

IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF, NAGERCOIL

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil

Wednesday, on the 2nd day of April 2025

E.A.No. 6 of 2025

in

E.P.No. 19 of 2019

CNR No.TNKK04-000354-2018

O.S.No.88 of 2009

1. S. Packiam

2. S. Mary Pushpam,

(rep by the 2nd respondent as per order in E.A No.2 of 2020 dated 13.04.2022 and amendment carried out as per order in E.A No. 4 of 2023 dated 02.11.2023)

... Petitioners/Respondents/Judgment Debtors

-VS-

1. Devasundaram (Died)

Addl.2 Grace Devasundaram

Addl.3 Stellin Jabha

Addl.4 Stellin Subha

Addl.5 Godwin Gawaskar

(Amended as per order in E.A No.3 of 2021 dated 22.04.2024)

... Respondent/Addl Respondents 2, 3, 4 & 5
Petitioner / Decree Holder

This Petition came before this Court on today i.e. 02.04.2025 for final hearing

Mr. R. Pravin, Counsel for the Petitioner and Mr. K. Chithambaram, Counsel for the

Respondent. Upon hearing both side and Upon perusing the case records, this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order XXI Rule 106 and Section 151 Code of Civil Procedure, seeking an order to set aside the exparte order dated 04.01.2025.

2. The Petitioner had stated that when the case was posted on 04.01.2025 for filing counter on the Petitioners' side, the Petitioner could not filed counter. Since he had to get some important documents and prepare the counter. For not filing counter he was set exparte. The Petitioner claim to have good defense, in this case, to make his defense, the exparte order dated 04.01.2025, passed against him, has to be set aside. Hence the above Petition.

3. The Respondent had filed counter, stating that the suit was Decreed After Full Trial. Thereafter the Petitioner/Judgement Debtor's Appeal in A.S. No. 20 of 2012, was also dismissed on merits. Without filing Second Appeal, the Petitioner/Judgement Debtor filed Review Petition and had not pursued the same. Hence it got dismissed for default. The Execution Petition is in the stage of delivery. The Petitioner/Judgement Debtor was given all opportunity. The Petitioner/Judgement Debtor earlier filed applications, to prolong the case. Even after granting sufficient time, they have not filed counter. The above Petition is an attempt to further protract the case. Hence the Respondent/Decree Holder prayed for dismissal of the above Petition.

4. The point for consideration is Whether the above Petition is liable to be allowed or not?

5. The Petitioner/Judgement Debtor was set exparte, for not filing counter in the Execution Petition. Now that along with the above Petition, the Petitioner/Judgement Debtor had filed his counter in the above Execution Petition. Considering the same, this Court is of the considered view that the above Petition could be allowed on terms.

In the result, the above Petition is allowed on condition, the Petitioner pays a sum of Rs.1,000/- (Rupees One Thousand Only) to the Respondent/Decree Holder on or before 20.04.2025 call on 21.04.2025.

Dictated to the Steno Typist and transcribed and Typed by her, in the Computer, corrected and pronounced by me, in Open Court this, the 2nd day of April, 2025.

I Additional District Munsif,
Nagercoil.

Petitioners' side witnesses & documents : Nil.

Respondent's side witnesses & documents : Nil.

I Additional District Munsif,
Nagercoil.

*I ADMCourt, Nagercoil.
Draft/Fair Order in
E.A.No.6/2025 in
E.P. No. 19/2019 in
O.S.No. 88/2009
Date:02.04.2025.*