

**IN THE COURT OF THE SUBORDINATE JUDGE,
ERANIEL**

Present: Thiru.K. SELVAPANDI, B.A., B.L.,

Sub Judge, Eraniel

Wednesday, the 03rd day of April 2024

E.A.No.3/2023

in

E.P. No.24/2022

in

O.S.No.62/2020

Subitha ... Petitioner/Judgment Debtor

And

M. Thangappan ... Respondent/Decree Holder

This petition coming on for final hearing before me on 28.03.2024 in the presence of Thiru. M. Beslin Jegadhees, Counsel for the Petitioner and Thiru. S. Sunil, Counsel for the respondent and upon hearing both sides arguments and upon perusing the documents and stood over having for consideration, till this day, this Court delivered the following:

ORDER

This is a petition filed by the petitioner/1st respondent under Order 21, Rule 106 CPC seeking to set aside the exparte order passed against him on 18.11.2022.

2. According to the petitioner, on 18/11/2022. When the case was posted for filing counter she could not appear or arrange an advocate for filing counter due to viral fever and hence ex parte order was passed against her on the same day and this is neither wilful nor wanton.

3. The respondent resisted the application by filing counter on the ground that the petitioner/judgement debtor appeared before the court through her advocate and the court had given sufficient time to file counter and finally on 02/12/2022, the execution petition was allowed and that the petitioner had filed petition of the petition to prevent the execution of decree and that this petition is filed to prolong the execution proceedings.

4. Admittedly, the respondent has filed main execution petition to execute the money decree against the petitioner herein/judgement debtor by way of attachment and Sale of immovable property. Decree was passed against the petitioner on 07/07/2021 directing her to pay the decree amount to the respondent herein within 6 months. Since the petitioner has not paid the decree amount as per the decree, the respondent filed the main execution petition for attachment, and sale of immovable property of the petitioner. Notice was served on the petitioner and the petitioner appeared through her advocate Mr. S. Ajilkumar in the execution petition. Thereafter, the counsel for the petitioner herein obtained several adjournment for filing counter and finally the execution petition was posted to 18/11/2022 for filing counter as no further adjournment. Therefore, sufficient time and opportunity were given to the petitioner to file her counter in the main execution petition. In spite of sufficient time and opportunity, the petitioner failed to

file the counter on 18/11/2022 and as such she was called absent and decided exparte.

5. The reason stated by the petitioner for not filing her counter on the particular date is that due to viral fever, she could not appear or arrange for an advocate to file counter. As already stated, the petitioner appointed counsel to appear on her behalf and as such it is not correct to say that she could not arrange for an advocate to file counter. Already, she appointed counsel and the counsel obtained frequent adjournment till 18/11/2022. Though the petitioner was decided exparte on 18/11/2022, she has filed this petition only on 27/04/2023 that is after the expiry of more than 5 months. No reason is stated by the petitioner for the delay and as to why she could not file the petition in time. She has simply stated that, due to viral fever she could not appear on 18/11/2022. Nothing is stated by her regarding the delay in filing this petition.

6. Hence this court is of the view that as rightly pointed out by the learned counsel for the respondent, the petitioner has filed this petition only to drag on the proceedings and as such there is no bonafide in filing this belated application.

7. Apart from that as per Order 21 Rule 106(3) CPC, the application shall be made within 30 days from the date of order or where in the case of, an exparte order, the notice was not duly served, within 30 days from the date when the applicant had knowledge of the order. Here in this case, notice was served on petitioner and the said appear through the counsel and exparte order was passed on 18/11/2022, due to non-filing of counter. It is not stated by the petitioner that notice was not

served on him. The exparte order was passed on 18/11/2022. Hence the application ought to have been filed within 30 days i.e. on or before 18/12/2022. But this petition has been filed on 27/04/2023. No reason is stated by the petitioner for the delay. Hence the petition is barred by limitation also and as such this petition is not maintainable and is liable to be dismissed.

In the result, this petition is dismissed. No costs.

Dictated to the Steno-Typist and directly typed by her in the computer and corrected and pronounced by me in the open Court on this, the 03rd day of April 2024.

**Sub Judge,
Eraniel.**

Petitioner's side Witnesses: : Nil
Respondents side Witness : Nil
Petitioner's side documents : Nil
Respondents side Documents : Nil

**Sub Judge,
Eraniel.**