

IN THE COURT OF THE DISTRICT JUDGE, KARUR.

Present : Tmt.S.Sumathy, M.L.,

District Judge, Karur

Tuesday, the 11th day of August, 2026

E.A. No.01/2026 in E.P. No.56/2025 in O.S.No.271/2023

K. P. Panneerselvam

...Petitioner/Respondent/Defendant

vs.

E. Sakthivel

...Respondent/Petitioner/Plaintiff

This petition came up for hearing on 30.07.2026 in the presence of Thiru M. Murali, advocate for the petitioner and of Thiru. M. Ramasamy, Advocate for the respondent and upon hearing the arguments and upon perusing the documents and having stood over till this day for consideration, this Court passed the following,

ORDER

The Petitioner/Respondent/Defendant has filed this petition under Section 5 of Limitation Act and Section 151 of C.P.C. seeking to condone the delay of 96 days in filing the petition under Order 21 Rule 106.

2) Averments made in the affidavit filed by the Petitioner/Respondent/Defendant are in brief:-

The petitioner herein is the respondent in the above EP and the defendant in the above suit. The respondent has filed suit for recovery of money under promissory note and the above case is posted on 16.10.2025 for appearance of petitioner's side. The petitioner has handed over the EP notice to his counsel and also he made his

signature in the vakkalath. But, unfortunately, his counsel's junior failed to note the hearing date in his office dairy and hence his counsel was unable to appear; there after the petitioner has received the sale notice for the above EP petition and then only they got knowledge that they failed to appear on behalf of the petitioner. The mistake is unfortunately happened and therefore, the petitioner has filed this petition to set aside the exparte order which was passed against him on 16.10.2025. The delay is neither willful nor wanton and by allowing the petition, no prejudice will be caused to other side, otherwise he will be put to hardship. Hence this petition.

3) Averments made in the counter filed by the Respondent/Petitioner/Plaintiff are in brief:-

The allegation and the averments made in the affidavit are denied by the respondent. The date of Decree is 03.02.2024 and based upon the Decree, the Execution Petition was filed and the Petitioner/Respondent/Defendant evaded service from 16.07.2025 to 16.10.2025 inspite of this Court notice and by private notice. On 16.10.2025, the Petitioner/Respondent/Defendant was set exparte and further steps for sale of the property was ordered. Subsequently, the Petitioner/Respondent/Defendant, has filed this Petition after the delay of 95 days in filing the Order 21 Rule 106 Petition, on 17.02.2026. The Petitioner/Respondent/Defendant in the affidavit would alleged that, the Execution Petition notice served upon him has been handed over by him to an Advocate and he has also signed the Vakalath but however the Junior of the Counsel engaged by him, has failed to note the hearing date in the dairy and hence the counsel engaged by him

was unable to appear on the appointed date and only after the receipt of the sale notice, the Petitioner was put in to knowledge of the above said facts are all invented story pleaded by the Petitioner, to file this frivolous Petition. The Petitioner has not specifically stated the name of the Counsel and his Junior engaged by him to appear in the above said Execution proceedings. Further it is the duty of the Client to meet his Counsel and to update the stage of the case. In order to escape from the rule of Law and in order to evade the Consequences of the delay caused from 16.10.2025 to 17.02.2026, the Petitioner has thrown mud upon the Advocate. The Petitioner is not due diligent and he has not approached this Court with clean hands. There are laches on the part of the Petitioner. There is no merits in this application and the same deserves for dismissal. In order to prevent this respondent from enjoying the fruits of the decree passed in his favour, the petitioner wantonly and willfully failed to appear between 16.07.2025 to 16.10.2025 and after further proceedings were ordered in the sale, the petitioner has filed this petition with malafide intention and hence prayed to dismiss the petition with cost.

4) Petitioner side arguments heard and on the respondent side since there was no representation and respondent also called absent, respondent side arguments closed as no arguments. Record Perused.

5) No oral and documentary evidences were marked on both sides.

6) The point for consideration is :-

1) Whether the delay has to be condoned or not ?

ANSWER TO THE POINT :-

7) The Petition is filed to condone the delay of 96 days in filing the petition to set aside the exparte decree which was passed on 16.10.2025.

8) The contention of the petitioner is that he is the respondent in the E.P No.56/2025 and the defendant in the above suit. The respondent has filed a suit for recovery of money under promissory note against the petitioner. When E.P.No.56/2025 is posted for appearance, the petitioner have engaged an advocate to appear on behalf of him and handed over the EP notice to them and made signature in the vakkalath. But unfortunately, his counsel's junior failed to note the hearing date in their office dairy and so his counsel was unable to appear on that day on behalf of the petitioner. Only after receiving the sale notice for the above E.P petition, he got knowledge that they are failed to appear on behalf of him. The above mistake is unfortunately happened. Therefore, the petition is filed and the delay is neither willful nor wanton. This petitioner also have filed the exparte decree setaside petition for the suit and prayed to allowed this petition.

9) On the other hand, the contention of the respondent is that the date of decree in suit is 03.02.2024 and based upon the decree, the execution petition was filed and this petitioner evaded service from 16.07.2025 to 16.10.2025 and only after private notice issued on 16.10.2025 the petitioner was set exparte and sale of the property was ordered. Subsequently, the petition was filed along with the petition under Order 21 Rule 106 on 17.02.2026. The reason stated by the petitioner for the delay and not appearing on 16.10.2025 are all invented story pleaded by the petitioner to file this

frivolous petition. The name of the counsel and his junior engaged by him to appear in the above said execution petition has not been specifically stated by the petitioner. It is the duty of the client to meet his counsel and to update the stage of the case. In order to escape from the rule of law and in order to evade the consequences of delay caused from 16.10.2025 to 17.02.2026, the petitioner has thrown mud upon the advocate. The petitioner is not due diligent and he has not approached this Court with true particulars and the petition is bad for suppression of material facts. In order to prevent this respondent from enjoying the fruits of the decree passed in his favour, the petitioner wantonly and willfully failed to appear between 16.07.2025 to 16.10.2025 and only after sale was ordered this petition was filed with malafide intention and hence pray to dismiss this petition.

10) On perusing the records, it is found that E.P.No.56/2025 was filed on 17.06.2025 against the exparte order passed in O.S. No.271/2025 on 03.02.2024. The above E.P.No.56/2025 was taken on file on 17.06.2025 and notice has been ordered to be issued to the respondent by 16.07.2025. On 16.10.2025, the respondent refused to receive both the postal summon through Court and the private notice and hence he was set exparte on 16.10.2025. Thereafter sale paper has been ordered and after filing sale paper, sale notice was ordered and the sale notice was also returned as No residence for several hearings and on 17.02.2026 this petition was filed. Hence, it is clear that there is a delay of 96 days in filing this petition under Order 21 Rule 66.

11) The reason stated by the petitioner for the delay is that he has engaged advocate to appear on behalf of him when the case is posted for his appearance and

also handed over the execution petition notice to his counsel and made signature in vakkalath, but unfortunately his counsel's junior failed to note the hearing date in the office dairy. Hence, his counsel was unable to appear on that day on behalf of the petitioner. Only after receiving the sale notice, he came to know above the exparte decree which was passed against him and hence default is beyond his control. However, on perusing of the records, it is found that the petitioner has refused to receive both court summon sent through post and also the private notice sent to him in E.P.No.56/2025. Hence, the petitioner's contention is that he had handed over the execution petition notice to his counsel and made signature in the vakkalath is found to be not acceptable. Further, as stated by the respondent counsel this the petitioner has not stated the date when he met his counsel, when he came to know the exparte decree, to which counsel he had handed over the execution petition notice and who is his junior and when he received the sale notice. Further, the petitioner has never stated that he was set exparte in the suit itself and no reason has been stated why he has set exparte in the suit. Hence, the contention of the respondent that the petitioner wantonly and willfully failed to appear in the EP proceeding 16.10.2025 to 17.02.2026 i.e., the date of filing of the petition and the reason stated for the delay in filing the petitioner is found to be acceptable one. Therefore, considering the above stated facts this Court is inclined to hold that this petition deserves dismissal and the point is answered accordingly.

In the result, the petition is dismissed.

Dictated to the Steno-typist directly, computerized by her, corrected and pronounced by me in Open Court, this the 11th day of August, 2026.

DISTRICT JUDGE,
KARUR.

LIST OF WITNESSES AND EXHIBITS:-

PETITIONER'S SIDE WITNESS AND EXHIBITS :- NIL

RESPONDENT'S SIDE WITNESS AND EXHIBITS :- NIL

DISTRICT JUDGE,
KARUR.