IN THE COURT OF DISTRICT JUDGE, NAGAPATTINAM

Present: Thiru. T.H. Mohammed Farooq, M.A., M.L.,
District Judge.

Monday, the 20th day of July 2026

I.A. No.02/2025 in A.S. No.6/2025
(CNR No.TNNG010004912024)

A. Lurdhu Sagaya Josphin .... Petitioner/Appellant

-Vs-

G. Rajendran .... Respondent/Respondent

This petition came before me for final hearing on 10.07.2026 in the presence of Thiru. M. Albertrayan, Advocate for the petitioner and Tvl. P. Sridharan, S. Shanmugam, J. Nareshkumar, S. Manimegalai, Advocates for the respondent and upon hearing the arguments of both sides and upon perusing the records and having stood over till this day for consideration, this court delivered the following...

ORDER

1. This petition is filed by the petitioner under Order 41 Rule 5 and sec.151 of CPC, praying to stay the execution of the decree passed by the Subordinate Judge, Nagapattinam in O.S. No. 24/2019, dated 15.11.2023, pending disposal of the appeal.

2. Notice was given to the respondent's Advocate-on-Record, and a counter has been filed.

3. **The averments and contentions on the side of the petitioner are that:** The trial court decreed the suit without appreciating the case of the

petitioner and the denial of execution of the promissory note by this petitioner, and by erroneously accepted the contentions raised on behalf of the respondent/plaintiff. Aggrieved by the same, this petitioner/appellant has preferred this appeal. The petitioner denies the signature on the promissory note and is taking steps to prove the same. If the respondent files an execution petition to execute the decree, the petitioner will be put to irreparable loss and hardship, and the petitioner will not be able to recover from the same. Hence, this petition is filed for stay.

4. **The averments and contentions on the side of the respondent are that:-** The respondent/plaintiff filed Execution Petition No. 50/2025 to execute the decree passed in the original suit. Although this petitioner/defendant appeared, he failed to file a counter on 18.12.2025, 20.02.2026, and 24.03.2026. This petition has been filed completely concealing the facts about the pending execution petition. The petition is field to delay the recovery of the amount while in Government service, and thereby prevent the respondent from obtaining the benefit of the decree, hence this petition is liable to be dismissed with costs.

5. **Point for determination is that:-**

Whether this petition is to be allowed or not?

On the Point:

6. Heard both sides. Perused the materials on record. The submission of the learned counsel for the petitioner/appellant is that, since the respondent/plaintiff has filed an execution petition to enforce the decree, it has become necessary to grant a stay of the decree passed by the trial court. Per contra, the learned counsel for the respondent submitted that the petitioner, who is working as a teacher, is due to retire in two years, and that the an appeal is preferred against the decree passed on 15.11.2023 and that

the petitioner is trying to drag the proceedings under one pretext or another without disposing of the appeal by filing a petition for expert examination, in order to escape from the liability. It is further submitted that if the petition is allowed, the respondent will be deprived of the fruits of the decree, making it highly difficult to recover the amount if the petitioner retires from service. It is further submitted that the respondent has appeared and is represented in E.P. No. 50/2025, however, so far has not filed any counter and is deliberately delaying the proceedings. Hence, the counsel for respondent strongly objects to the granting of a stay, as an execution petition is already pending.

7. In reply, the learned counsel for the petitioner/appellant submitted that the petitioner is ready to deposit the decretal amount in court. Therefore, the learned Advocate for petitioner was directed to file a memo to that effect in three days and this petition was reserved for orders on 20.07.2026. Accordingly, a memo is filed on 13.07.2026 in the office section by the petitioner/appellant reporting that the petitioner is ready to deposit a sum of ₹3,00,000/- (Rupees Three Lakhs Only).

8. This Court gave careful consideration to the contentions and the submission made on the side of the petitioner/ appellant to deposit Rs.3,00,000/- (Rupees Three Lakhs Only) and perused the material records. The trial Court has passed a money decree against the petitioner/appellant on 15.11.2023, directing to pay a sum of Rs. 2,31,530 along with subsequent interest at the rate of 12% p.a. on the principle sum of Rs.2,00,000/- till the date of decree and thereafter at the rate of 6% till the date of realization, and with costs. The appeal is filed with a delay in the year 2024. The delay is condoned as per order in I.A.No. 1/2024 viz. Order dated 17.02.2025 and the appeal is admitted in A.S. No. 6/2025. Almost one year has elapsed, the

petitioner/appellant has not chosen to argue the appeal. But, on 24.09.2025, 6 months after the appeal is admitted, the petitioner/appellant has filed an application in I.A.No. 4/2025, under Section 45 of Indian Evidence Act, to subject the disputed promissory note for expert examination, which is pending and hearing with this petition and posted for orders today. Today, orders is passed in I.A. No. 4/2025 that it cannot be heard separately, but has to be heard along with the appeal and taken for consideration on merits, and ordered to be called with the appeal for hearing. So, only after hearing the appeal and the petition under Section 45 Evidence Act will be decided on merits. If it got merits, then the documents has to be referred for expert opinion and appeal will remain pending until the additional evidence is adduced and reheard. This will take substantial time.

9. The learned counsel for respondent contended that the petitioner is working as a teacher and will retire in two years from service. It is further contended that the petitioner has not taken steps to send the document for expert examination before the trial Court and belatedly filed the petition in appeal stage in order to drag the proceeding until her retirement, in order to defeat the decree and prevent the respondent/plaintiff from enjoying the fruits of the decree. It is further submitted that it is difficult for the respondent/plaintiff to recover the amount if the petitioner/appellant retires from service. However, the petitioner/appellant has come forward to deposit Rs.3,00,000/- (Rupees Three Lakhs Only) in Court.

10. So, considering the facts and circumstance of the case and there being a genuine concern raised on the side of the respondent/plaintiff and the submitted to deposit the decreed amount in Court, it is just and appropriate to invoke Order 41 Rule 1(3) CPC, which reads as below;

"(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit."

11. While Order 41 Rule 5(3) CPC contemplates that as below;

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree."

12. By conjoint reading of the above provision in a case of appeal against the money decree, the appellant shall deposit the disputed amount within the time fixed by this Court, only then a stay can be granted. So, applying the above provision, the petitioner/appellant will be entitled for stay only on deposit of the disputed amount. The disputed amount is the suit claim of Rs. 2,31,530/-. The petitioner has offered to pay Rs.3,00,000/- with a part of subsequent interest. So, in the interest of justice this court is inclined to direct the petitioner/appellant to deposit Rs.3,00,000/- in the trial court within 15 days from the date of this order, and to pass a conditional order for stay. Accordingly this point is answered.

13. **In the result**, this petition is allowed on condition. Stay is granted on condition that the petitioner/appellant shall deposit Rs.3,00,000/- (Rupees Three Lakhs Only) before the trial Court towards the disputed amount as per the decree passed in O.S. No. 24/2019 on the file of the Sub-Court, Nagapattinam, within 15 days from the date of this order as per Order 41 Rule 1(3) CPC. On such deposit there shall be a stay of the execution of

the decree dated 15.11.2023 passed in O.S. No. 24/2019 on the file of the Sub-Court, Nagapattinam, until the disposal of the appeal. The petitioner/appellant shall produce proof of such deposit before this court on or before 02.08.2026. On failure to deposit as directed above, this petition will stands automatically dismissed and stay if any will stand vacated without any further orders and execution court is at liberty to proceed with the execution proceeding in E.P. No. 50/2025 by adopting to the procedure under Order 41 R5(6) of CPC. No cost. The trial Court is required to deposit amount remitted by the petitioner in any one of the Nationalized bank in interest accruing fixed deposit for the benefit of the parties.

//Dictated to the Stenographer by me, taken down, transcribed and typed by her in computer, corrected and printed-out, and pronounced by me, in the Open Court, this the 20th day of July, 2026//.

MOHAMMED FAROOQ T H

Digitally signed by MOHAMMED FAROOQ T H
Date: 2026.07.20 18:41:50 +0530

DISTRICT JUDGE,
NAGAPATTINAM.