

**IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,
TIRUCHENGODE**

**Present: Mrs.G.Rubana, B.Sc., M.L.,
Additional Subordinate Judge, Tiruchengode.**

On Tuesday, this the 24th day of March 2026

**R.E.A.No: 05 of 2026
in
R.E.A.No: 04 of 2025
in
R.E.P.No: 28 of 2016
in
M.C.O.P.No.504 of 2004**

Mrs. Dhavamani,

..... Petitioner/ 1st Respondent/
Petitioner-Judgment Holder .

//Versus//

Mrs. Padmavathi,

..... Respondent/Claimant/3rd Party.

This petition having been filed on 22.01.2026 and taken on file on 27.01.2026 and coming on 09.03.2026 for final hearing before me, in the presence of Mr. K. Ganapathi, B.A., B.L., learned counsel for the Petitioner/ 1st Respondent/ Petitioner-Judgment Holder and Mr. K. Manivel, B.A., B.L., learned counsel for the Climate / 3rd Party and having stood over for consideration till this day, upon perusing the connected records and hearing the arguments on both sides, this Court doth deliver the following:

Order

The present application has been filed by the petitioner under Order XXI Rule 106 of the Code of Civil Procedure, 1908, praying that this Hon'ble Court may be pleased to set aside the exparte order passed against him on 23.07.2025.

2. The gist of the affidavit filed by the Petitioner/ 1st Respondent/ Petitioner-Decree Holder is as follows :-

2.1. The petitioner submits that he is the petitioner herein and the 1st respondent in R.E.A. No. 4 of 2025 and the petitioner in the Execution Petition. The respondent/bar claimant has filed the above said R.E.A.No. 4 of 2025 seeking to raise the attachment effected in the execution proceedings. The said application was posted on 23.07.2025 for filing the counter of this petitioner. However, due to severe fever and health issues, the petitioner was unable to move about and therefore he could not contact his counsel and give proper instructions for filing the counter on the said date.

2.2. Subsequently, after regaining his health, the petitioner approached his counsel and came to know that on 23.07.2025 he had been set ex parte in the said petition. Immediately thereafter, the petitioner has filed the present application to set aside the ex parte order. The non-appearance of the petitioner on the said date was neither wilful nor wanton, but purely due to the above unavoidable circumstances. If the ex parte order is not set aside, the petitioner will be put to irreparable loss, hardship and prejudice. Hence, it is just and necessary that this Hon'ble Court may be pleased to set aside the ex parte order passed against the petitioner.

3. The gist of the counter statement filed by the respondent / claimant /3rd party is as follows: -

3.1. The respondent submits that the present petition is not maintainable either in law or on facts. The petitioner is put to strict proof of all the averments made in the petition except those that are specifically admitted herein. The respondent states that the petitioner has filed the present petition under Order XXI Rule 106 of the Code of Civil Procedure seeking to set aside the ex parte order passed against him on 23.07.2025. However, the said petition has been filed only on 22.01.2026. As per law, such an application ought to have been filed within 30 days from the date of the order. Since the petitioner has failed to file the petition within the prescribed period of

limitation, the present petition is clearly barred by limitation under the Limitation Act and is liable to be dismissed in limine.

3.2. The respondent further submits that it is true that the respondent/claimant has filed the petition in R.E.A.No. 4 of 2025 seeking to raise the attachment. However, it is false to state that the case was posted only on 23.07.2025 for filing the counter. In fact, the said R.E.A.No. 4 of 2025 was posted on several earlier occasions, namely on 11.03.2025, 21.04.2025 and 21.06.2025, for filing counter by the petitioner. Despite sufficient opportunities granted by this Hon'ble Court, the petitioner failed to file his counter. Ultimately, on 23.07.2025, when the matter was again called, the petitioner remained absent and failed to file the counter, and hence he was rightly set exparte.

3.3. The allegation that the petitioner was suffering from severe fever and was unable to contact his counsel is false and denied. The petitioner has not produced any medical records, prescription, or proof of treatment to substantiate his claim of illness. He has also not stated the details regarding the period of illness, the treatment taken, or the date on which he allegedly recovered.

3.4. The respondent therefore submits that the reasons stated by the petitioner are false and invented only for the purpose of explaining the delay and to protract the proceedings. The present petition has been filed only with a view to drag on the proceedings and to waste the valuable time of this Hon'ble Court. Hence, it is prayed that this Hon'ble Court may be pleased to dismiss the present petition with costs.

4. There is no oral or documentary evidence adduced on the both side

5. Points for Determination :

Whether this Petition is to be allowed or not?

5.1. Heard the learned counsel for the petitioner and claimant and perused the records.

5.2. The learned counsel for the petitioner submits that due to severe illness, he could not appear before this Hon'ble Court or instruct his counsel to file the counter on 23.07.2025 and hence he was set exparte on that day. The absence was neither wilful nor wanton but due to unavoidable circumstances. Immediately after recovering and coming to know about the ex parte order, he has filed the present petition. If the order is not set aside, the petitioner will suffer irreparable loss and prejudice. Hence, the petitioner prays that the ex parte order may kindly be set aside.

5.3. The respondent submits that the present petition is not maintainable as it has been filed beyond the prescribed period of limitation. The petitioner was set exparte on 23.07.2025, whereas the present petition has been filed only on 22.01.2026. The petitioner was given several opportunities earlier but failed to file his counter and remained absent. The allegation of illness is false and not supported by any medical proof. Hence, the petition is liable to be dismissed.

5.4. On perusal of the records in E.P. No. 28 of 2016, it is seen that the present execution petition has been filed on the basis of the award passed in M.C.O.P. No. 504 of 2004 by the Additional Subordinate Judge, Salem. It is further seen that the petitioner/deGREE holder had earlier filed E.P. No. 112 of 2006 and later the same was not pressed on 22.08.2010 since the petitioner obtained transmitted decree in E.P. No. 384 of 2006. Thereafter, the petitioner has filed the present execution petition in the year 2016 on the basis of the transmitted decree in E.P. No. 384 of 2006, seeking to recover a sum of Rs.5,97,848/- together with interest and costs of Rs.15,270/-. The present execution petition has been filed for the purpose of attaching and bringing the E.P. schedule mentioned property for sale.

5.5. On further perusal of the records, it is seen that the petition mentioned property was attached in the execution proceedings and the said attachment was made absolute on 27.06.2017. It is further seen that the present E.A. No. 4 of 2025 has been

filed by the claimant on 04.02.2025 seeking to raise the attachment and to declare that the petition mentioned property is the absolute property of the claimant.

5.6. On perusal of the docket order in R.E.A. No. 4 of 2025, it is seen that this Hon'ble Court, after affording sufficient opportunities, called absent of the respondent / decree holder as well as the judgment debtor, and as they failed to file their counter, they were set exparte. Thereafter, exparte evidence was recorded when the matter was posted for enquiry, the respondent/decreed holder has now filed the present petition seeking to set aside the ex parte order dated 23.07.2025, along with his counter.

5.7. Further it is seen from the records that the Petitioner/decreed holder had earlier filed E.P.No.112/2006 which was subsequently not pressed on 22.08.2010. It is further seen that the judgment debtor executed a power of attorney only on 09.05.2007. Further, the power agent had executed a sale deed in favour of the claimant's husband on 23.05.2005. Subsequently the claimant's husband settled the property in favour of the claimant on 11.11.2016.

5.8. In the above circumstances, the purchase made by claimant's husband appears to be effected during the pendency of execution proceedings. Hence, detailed enquiry is necessary to adjudicate the rights of the parties.

5.9. Considering the fact that the petitioner/decreed holder has set exparte in the interlocutory application and further he has already filed his counter and having regard to the nature of adjudication required under Order XXI Rule 58 of the Code of Civil Procedure, 1908, this Court is of the view that an opportunity should be afforded to the petitioner to contest the matter on merits. Further, when such adjudication required fullfledged enquiry and also affects the rights of the decreed holder, that matter cannot be decided effectively in his absence. Hence, the contention of the respondent counsel that, regarding non-maintainability of the

present petition is not sustainable. The said view is also supported by the principle laid down by the **Hon'ble Madras High Court in *R. Maniyan v. M. Mythili and ors* in C.R.P.(NPD) No. 3400 of 2025, dated 08.08.2025.**

5.10. Accordingly, the exparte order dated 23.07.2025 is set aside. However, considering that the petitioner was set exparte and has approached this Court belatedly, this petition is allowed on payment of costs.

6. Result:-

In the result, this petition is allowed on condition that the petitioner shall pay a cost of Rs.1,000/- to the claimant/3rd party on or before 01.04.2026, failing which this petition stand dismissed automatically.

Dictated by me to the Steno-Typist and has been typed in the computer directly, corrected and pronounced by me in the open Court on 24th day of March 2026.

Additional Subordinate Judge,
Tiruchengode.

Both side oral and documentary evidence : Nil

Additional Subordinate Judge,
Tiruchengode.

Fair/draft order

R.E.A.No: 05 of 2026 in R.E.A.No: 04 of 2025 in
R.E.P.No: 28 of 2016 in M.C.O.P.No.504 of 2004
Date :24.03.2026.