

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

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

On Tuesday, this the 10th day of February 2026

R.E.A.No.01 of 2024

in

R.E.P.No.50 of 2020

in

O.S.No: 109 of 2018

Mr. P.N.Vishwanathan,

..... Petitioner/Respondent/ Defendant.

/Vs/

Mr.R. Selvaraj,

..... Respondent/Petitioner/Plaintiff.

This Petition having been filed on 22.01.2024 and taken on file on 25.07.2024 and came up for final hearing on 04.02.2026 before this court, in the presence of Advocate Mr.K.K.Palanisamy, B.A.,B.L., for the Petitioner/Respondent/ Defendant and Advocate Mr.K.Pushparaju, B.Sc., B.L., for the Respondent/Petitioner/Plaintiff and having stood over for consideration till this day, upon perusing the connected material parts of records and hearing both side arguments, this court doth delivers the following:

ORDER

The Petitioner/Respondent/Defendant has filed the present petition under Order XXI Rule 26 read with Section 151 of the Code of Civil Procedure, 1908, seeking to stay the execution proceedings in E.P. No. 50/2020 pending disposal of the interlocutory applications in I.A. Nos. 2 of 2023 and 3 of 2023 filed in O.S. No. 109 of 2018.

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2. The gist of the petition filed by the petitioner is as follows: -

2.1. The petitioner submits that he is the petitioner herein and the defendant in the suit. He further submits that the respondent has filed the suit based on a promissory note. The petitioner specifically denies having borrowed any loan amount and further denies execution of the promissory note for valid consideration.

2.2. The suit was posted on 12.12.2018 for filing of the written statement. However, due to the petitioner's advocate having undergone heart surgery and being advised complete bed rest, the petitioner was unable to file the written statement. Consequently, an exparte decree came to be passed against the petitioner on 26.02.2020.

2.3. Thereafter, the petitioner filed I.A. No. 1 of 2023 to set aside the exparte decree, and the same was posted on 20.02.2023 for issuance of notice to the respondent. However, due to an inadvertent clerical mistake, the petitioner's counsel wrongly noted the date as 20.03.2023 in the diary instead of 20.02.2023, and as a result, notice could not be issued to the respondent on the correct date. Hence, I.A. No. 1 of 2023 was dismissed for default.

2.4. The dismissal of the said application came to the petitioner's knowledge only on 20.03.2023, which was also the date fixed for hearing in E.P. No. 50 of 2020. Thereafter, the petitioner filed applications to restore I.A. No. 1 of 2023, and since a delay of five days had occurred, he also filed I.A. Nos. 2 of 2023 and 3 of 2023 seeking condonation of delay.

2.5. The petitioner submits that only if the said applications are allowed, he would be in a position to contest the suit and prove his case by letting in oral and documentary evidence. Otherwise, the petitioner would be put to irreparable loss and serious prejudice. Hence, the petitioner has filed the present petition seeking to stay the execution proceedings in E.P. No. 50 of 2020 till the disposal of I.A. Nos. 2 of 2023 and 3 of 2023 in O.S. No. 109 of 2018.

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3. The gist of the reply statement filed by the Respondent / Petitioner / Plaintiff is as follows: -

3.1. The respondent has filed this counter denying the averments made in the petition, except those that are expressly admitted herein. All other averments are false, untenable, and hence denied. Further, the respondent admits that he has filed the suit based on a promissory note. It is false to allege that the petitioner did not borrow the loan amount or that he did not execute the promissory note for valid consideration.

3.2. It is true that the suit was posted on 12.12.2018 for filing the written statement of the petitioner. However, it is false to allege that the petitioner could not file the written statement due to the alleged heart surgery of his counsel. The said allegation is false, concocted, and unsupported by any material. It is further false to state that the petitioner was diligent in prosecuting the proceedings. The petitioner deliberately failed to file the written statement, and consequently, an ex parte decree was rightly passed against him on 26.02.2020.

3.3. It is false to state that the petitioner was unaware of the dismissal of I.A. No. 1 of 2023. The application to set aside the ex parte decree was dismissed for default due to the petitioner's own negligence in not taking steps to issue notice to the respondent. The explanation that the advocate mistakenly noted the hearing date as 23.02.2023 instead of 22.02.2023 is false and unacceptable and is denied the all other averments in the petition in toto.

3.4. The petitioner was fully aware of the pendency of the proceedings and has willfully allowed the suit to be decreed ex parte. Even thereafter, he failed to prosecute the application filed to set aside the ex parte decree and allowed the same to be dismissed for default. The petitioner has now filed I.A. Nos. 2 of 2023 and 3 of 2023 seeking condonation of delay and restoration, which are still pending. The present petition has been filed only with a view to protract the proceedings and to

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stall the execution proceedings in E.P. No. 50 of 2020 by assigning false and untenable reasons.

3.5. The petitioner has not made out any sufficient cause either in the present petition or in I.A. Nos. 2 of 2023 and 3 of 2023 to warrant an order of stay. If the execution proceedings are stayed, the respondent will be put to irreparable loss and serious prejudice. Hence, the respondent prays that this Hon'ble Court may be pleased to dismiss this petition with costs.

4. Point for consideration:-

Whether this petition can be allowed or not?

5. No oral and documentary evidence has been adduced on either side.

6. Point :-

6.1. The learned petitioner counsel submits that due to unavoidable circumstances, the defendant could not file his written statement and later an exparte decree came to be passed against him. Thereafter, the defendant has filed an application under Section 5 of the Limitation Act seeking condonation of delay, along with a restoration petition to restore the application to set aside the exparte decree. The said applications are pending for disposal. Further, submits that he has a fair and bona fide defence and every chance of succeeding in the suit on merits. Hence, the defendant prays that this Hon'ble Court may be pleased to stay the execution proceedings till the disposal of the pending applications, in the interest of justice.

6.2. The respondent submits that he has filed the suit based on a promissory note, and an exparte decree was passed in his favour. After a lapse of nearly two years, the petitioner/defendant filed an application to set aside the exparte decree in the year 2023. The said application was also dismissed for default for want of prosecution. The respondent further submits that with a view to drag on the proceedings and to prevent the respondent from enjoying the fruits of the decree, the petitioner/defendant has been filing petitions one after another without any bona fide

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reasons. The present petition has been filed only to stall the execution proceedings. Hence, the respondent prays to dismiss this petition.

6.3. It is an admitted fact on both sides that the respondent/plaintiff has filed the suit in O.S. No. 109 of 2018 based on a promissory note in the year 2018. It is also an admitted fact that the suit was posted on 12.12.2018 for filing of the written statement on the side of the petitioner/defendant and, since he failed to file the written statement, he was set exparte. Thereafter, an exparte judgment and decree came to be passed against him on 26.02.2020.

6.4. It is further seen that after a lapse of nearly three years, the petitioner filed an application to set aside the exparte decree in I.A. No. 1 of 2023 only in the year 2023. Even the said application was dismissed for default for want of taking steps to issue notice to the respondent. Thereafter, the petitioner has filed applications for condonation of delay under Section 5 of the Limitation Act and for restoration, which are also of the year 2023.

6.5. It is pertinent to note that though the said I.A. Nos. 2 of 2023 and 3 of 2023 are stated to be pending, this petition came for final hearing only on 04.02.2026, and for the past three years no effective steps appear to have been taken by the petitioner to prosecute the said applications. This clearly shows the lack of diligence on the part of the petitioner in pursuing the remedies now relied upon for seeking stay.

6.6. It is also relevant to note that the execution proceedings in E.P. No. 50 of 2020 have been pending for more than five years. The prolonged pendency of both the execution proceedings and the interlocutory applications is attributable solely to the conduct of the petitioner.

7. RESULT: -

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

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 10th day of February 2026.

Additional Subordinate Judge,
Tiruchengode.

- 1). Petitioner side oral and documentary evidence : Nil
- 2). Respondent side oral and documentary evidence : Nil

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Fair/draft order

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