



**IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM,
THE NILGIRIS**

Present: **Thiru. L. PRAKASH, B.Sc., B.L.,**
DISTRICT MUNSIF, UDHAGAMANDALAM.

Friday, the 10th day of July 2026

E.A. No. 04 of 2026
in
E.P. No. 18 of 2025
(C.N.R. No. TNNS030 - 00123 - 2025)

Hassan

... Petitioner/Respondent/Tenant

/VS/

Mohammed Ameen Rajani

... Respondent/Petitioner/Landlord

This petition came on 16.04.2026 for final hearing before me in the presence of Mr. H. Rajesh, learned Counsel for the Petitioner/Respondent/Tenant and of Mr. P. Rangaswamy, learned Counsel for the Respondent/Petitioner/Landlord, upon hearing both sides, and upon considering case records carefully, this court passes the following

ORDER

1. This petition is filed under Order XXI Rule 106 read with Section 151 of the Code of Civil Procedure seeking to set aside the ex parte order dated 19.02.2026 passed in E.P. No.18 of 2025 and to permit the petitioner/respondent to contest the execution proceedings by receiving his counter statement.

**Gist of Petition and affidavit:**

2. The brief averment of petition is that, the petitioner is the respondent in the above E.P. and tenant in the main R.C.O.P. Petition under the respondent/landlord. The respondent/landlord has filed R.C.O.P. No. 01 of 2019 under Section 10(3)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act and the same was allowed on 21.04.2025, effectively ordering the tenant's eviction. Following the order, the landlord filed E.P. No. 18 of 2025 to take legal delivery of possession of the property. An appeal in R.C.A. No. 04 of 2025 has been filed against the original eviction order before the Hon'ble Sub Court, Udhagamandalam, along with an appeal, the petitioner also filed a stay petition I.A. No. 01 of 2025 under Section 23(2) of the Act to pause the eviction and the execution of the order until the appeal is decided.

3. The petitioner further states that, while a stay petition was pending and posted for orders, the respondent suppressed this fact and proceeded with the execution petition. On 19.02.2026, the petitioner requested more time to file a counter statement because the stay order was still pending, but the Court dismissed it and allowed the execution petition on the same day. He claims the failure to file the counter statement was neither willful nor deliberate, but due to ongoing proceedings in the Sub-Court. The petitioner asserts he have a strong case and would suffer great hardship if the ex-parte order dated 19.02.2026 is not set aside. Hence, the petitioner prays to set aside the ex-parte order dated 19.02.2026 and permit to proceed with the case.

Gist of Counter statement:

4. On the other hand the respondent/landlord contends that, the petition is false, frivolous, vexatious and unsustainable either on facts or in law, stating that, he already filed an application before the Subordinate Judge of Ootacamund against the



previous order, since the appellate court is ceased of this appeal, this court has become functus officio. It is argued that any requests for a stay or other petitions must be directed to the appellate court, not this court, since the case is now before an appellate court, and this court cannot entertain any such petition to set aside the ex parte orders for non-filing of the counter.

5. The respondent further states that, the petitioner's appeal in R.C. A. No. 04 of 2025 and also requested for a stay of lower court's order via an interlocutory application in I.A. No. 01 of 2025. The appellate court has already dismissed the stay petition, this dismissal was based on the respondent/landlord's objection that the petitioner/tenant while admitting to being a tenant, has failed to deposit significant rent arrears. When the appellate court has already refused the stay, this court cannot entertain a similar petition on the same issue. Hence, the respondent/landlord prays for dismissal of the petition.

Points for consideration:

6. Heard the arguments submitted by the learned counsels appearing for either side. The petition, counter statement and the case records perused carefully. The point that arose for consideration in this petition is, *Whether the petitioner has shown sufficient cause for setting aside the ex parte order dated 19.02.2026 passed in E.P. No.18 of 2025?*

Discussion:

7. The petitioner is the respondent/judgment-debtor in E.P. No.18 of 2025. According to him, the respondent/landlord obtained an order of eviction in R.C.O.P. No.01 of 2019 under Section 10(3)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act on 21.04.2025. Challenging the said eviction order, he preferred R.C.A. No.04 of 2025 before the learned Subordinate Judge, Udhagamandalam, along with



I.A. No.01 of 2025 seeking stay of the eviction order. It is his contention that, while the stay petition was pending for orders, the respondent proceeded with the execution petition and, on 19.02.2026, he could not file his counter statement as he was awaiting the orders in the stay petition. Consequently, he was set ex parte. According to him, the omission to file the counter statement was neither wilful nor wanton and, therefore, the ex parte order deserves to be set aside.

8. The respondent resisted the petition contending that the appeal as well as the stay petition had already been filed before the appellate Court and, therefore, this Court has become functus officio insofar as the matters relating to stay are concerned. It is further contended that the appellate Court has subsequently dismissed the stay petition in I.A. No.01 of 2025, taking note of the tenant's failure to deposit the admitted arrears of rent. Hence, according to the respondent, no sufficient cause has been made out for setting aside the ex parte order and the present petition deserves dismissal.

9. On perusal of the records, it is seen that the execution petition was presented on 19.12.2025 and was taken on file on the same day. Notice was served on the respondent/judgment-debtor. The respondent entered appearance through counsel on 19.01.2026. Thereafter, repeated opportunities were granted on 02.02.2026, 09.02.2026 and finally on 19.02.2026 for filing the counter statement. Despite sufficient opportunities, no counter statement was filed. Consequently, this Court set the respondent ex parte on 19.02.2026 and posted the matter for ex parte enquiry on 03.03.2026. Significantly, on the very next hearing date, namely 03.03.2026, the petitioner filed the present application under Order XXI Rule 106 CPC along with the proposed counter statement, explaining the reasons for his earlier default.



10. It is well settled that the mere filing or pendency of an appeal does not automatically operate as a stay of the decree or execution proceedings. Unless a competent appellate Court grants an order of stay, the decree-holder is entitled to proceed with the execution. Therefore, the explanation offered by the petitioner that he refrained from filing the counter statement solely because the stay petition was pending before the appellate Court cannot be accepted as a legally sustainable reason. The pendency of the appeal or the stay application did not dispense with his obligation to comply with the directions of this Court and file his counter statement within the time granted.

11. Nevertheless, it is equally well settled that procedural rules are intended to advance the cause of justice and not to defeat it. Courts ordinarily lean in favour of adjudication on merits unless the conduct of the defaulting party is found to be wilful, contumacious or intended to protract the proceedings. Unless mala fides or deliberate negligence are established, a liberal approach should ordinarily be adopted while considering applications seeking to remove procedural defaults, subject to appropriate terms to compensate the opposite party.

12. In the present case, though the petitioner failed to file the counter statement despite repeated adjournments, it is relevant to note that immediately after being set ex parte, he approached this Court without undue delay by filing the present application along with the counter statement itself. The conduct of the petitioner indicates that he intends to contest the execution proceedings and not to abandon the same altogether. At the same time, the respondent/decreed-holder has been compelled to incur unnecessary delay on account of the petitioner's default.

13. Accordingly, this Court is of the considered view that while the explanation offered by the petitioner cannot be accepted as wholly satisfactory, the



ends of justice would be better served by affording him one final opportunity to contest the execution proceedings, subject to payment of realistic costs so as to compensate the decree-holder for the delay occasioned.

Result:

14. In the result, this petition is allowed, subject to the following conditions:

(i) The petitioner/respondent shall pay a sum of Rs.1,500/- (Rupees One Thousand and Five Hundred only) as costs to the respondent/decreed-holder on or before 20.07.2026.

(ii) Upon payment of the above costs within the stipulated time, the ex parte order dated 19.02.2026 shall stand set aside and the counter statement filed along with this petition shall be received on file.

(iii) In default of payment of costs within the time stipulated above, this petition shall stand dismissed automatically without further reference to this Court, and the ex parte order dated 19.02.2026 shall remain in force.

15. Call on 20.07.2026 for reporting compliance of the condition.

This order is dictated to the steno - typist, transcribed by her in computer, corrected by me and pronounced by me in the open court on this 10th day of July 2026.

**District Munsif,
Udhagamandalam.**



Draft/Fair Order:

**E.A.No.04/2026
in
E.P. No. 18/2025**

Dated: **10.07.2026**

**District Munsif Court,
Udhagamandalam.**