

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Present: Tmt. R. ELAMATHI, B.A., B.L.,
District Munsif Court, Sankari

Wednesday, the 16th day of April, 2025

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், சித்திரை திங்கள் 03ம் நாள் புதன்கிழமை

R.E.A.No.1/2024 in R.E.P.No.7/2023 in O.S.No.116/2018

G. Kandasamy ... Petitioner / Respondent/
Judgment Debtor

//Versus//

S. Balamurugan ... Respondent / Petitioner /
Decree Holder

This petition taken to file on 02.01.2024 and coming on this day 01.04.2025 for hearing before me in the presence of Thiru. C. Paraneedharan, Thiru. K. Sidheswaran, Thiru. M. Viswanathan Advocates for the Petitioner and of Thiru. S. Murugesan, Thiru. P. Sakthivel, Thiru. K. Ganapathi, Thiru. K. Dheenadhayalan Advocates for the Respondent and after perusing the Petition, counter, both sides arguments this Court passed the following,

ORDER

The Petitioner has filed this petition under Order 21 Rule 106 to order to set aside the exparte order passed against the petitioner in R.E.P. No.7/2023 which was passed on 21.09.2023.

1) Gist of the Petition:-

The Petitioner / Judgment Debtor submits that on 21.09.2023, in R.E.P.No.7/2023, the counter had to be filed by him. However due to

illness, the petitioner was unable to appear on that day, and as a result, the court set him ex-parte. The petitioner further submits that his non appearance on the said date was neither wilful nor wanton. The petitioner files this petition to set aside the exparte order passed against him, (or) otherwise, he will suffer irreparable loss and hardship. Hence, he prays before this Hon'ble Court to set aside the exparte order passed on 21.09.2023.

2) Gist of the Counter:-

(i) The respondent/decreed holder denies all the averments made by the petitioner/Judgment Debtor except those that are admitted to be true. The Respondent submits, that the petitioner/Judgment Debtor assertion regarding his illness preventing him from appearing before the court on 21.09.2023 is false. It is true that the Petitioner/Judgment Debtor did not appear for filing counter on 21.09.2023. Therefore, he was set exparte.

(ii) The Respondent / Decree Holder further avers that R.E.A.No.1/2024 deserves to be dismissed in limine, as the Petitioner/Judgment Debtor was set exparte on 21.09.2023. Subsequently, he should have filed a petition to set aside the exparte order within 30 days as per Order 21 Rule 106. Moreover, the Petitioner/Judgment Debtor did not specify the dates of his treatment (or) provide a medical certificate, nor did he state on which date he met his advocate. This petition filed by the petitioner/Judgment Debtor has no prima facie case, if allowed the Respondent/Decree Holder will be put into irreparable loss and injury.

3) Points for Consideration :

4) Heard, both sides. Perused case records. The Petitioner/ Judgment Debtor avers that he filed this petition to set aside the order setting him exparte on 21.09.2023. He admits that he knows about the date of hearing but could not appear due to his illness.

5) The Respondent / Decree Holder vehemently denies the claim of the Petitioner / Judgment Debtor of illness and asserts that the petitioner did not appear (or) file a counter on 21.09.2023, which led to the exparte order. Further Respondent/Decree holder argued that this petition should have been filed by Petitioner/Judgment Debtor within 30 days as per Order 21 Rule 106. Further Respondent / Decree Holder contends that petitioner failed to provide details of his treatment (or) filing of a medical certificate and has not shown when he consulted his advocate.

6) Although, under Order 21 Rule 106 (3), the delay could be condoned only if it is within a period of 30 days. However, in view of the latest Judgment reported in **2023/MHC/950 CRP (MD) No.422/2023 (SINGADURAI.V .Vs. K. PALANIRAJAN Alias RADHA) In Para 6 referred 2011 (6) CTC 268 (N. Rajendran Vs., Shirram Chits Tamil Nadu Pvt, Ltd., rep by its Branch Manager / Foreman)**, there is an amendment to Order 21 Rule 105 (3) by introducing a proviso, which empowers the court to condone the delay even beyond the period of 30 days, when sufficient cause has been made out.

7) Although the Petitioner/Judgment Debtor has not explained the reason for each and every day delay, of 72 days, it was neither wilful nor wanton as the Petitioner/Judgment Debtor himself admits the date of hearing and the reason for non-appearance. By considering the above citation and circumstances of the case, this court deems proper to give one

more opportunity for them to contest the execution proceedings. In this circumstances, this court is of the opinion that it would be in the interest of the justice to allow this petition and for the inconvenience caused to the Respondent/ Decree Holder by this Petitioner/Judgment Debtor, this court is of the view in the interest of the justice to allow this petition with cost.

8) Finally, this Petitioner/Judgment Debtor shall pay a sum of Rs.1000/- to the Respondent/Decree Holder by 23.04.2025 as cost. It is also ordered that in case of default, this petition will automatically be dismissed. Call on 24.04.2025.

This order directly typed by Steno-typist and corrected by me, and Pronounced in the Open Court on 16.04.2025.

Sd/- R. Elamathi,
District Munsif,
Sankari.

Encl.: - Nil-

Sd/- R. Elamathi,
District Munsif,
Sankari.