

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT : Tmt.R.PREMI, B.A., LL.B(Hons).,

District Munsif, Devakottai

Saturday, 19th the day of July, 2025

E.A.No. 01/2022

in

E.P. No. 11/2020

in

R.C.O.P.No. 1/2017

Nagaraj

...Petitioner/ Respondent/Tenant

/Vs/

Subramanian

...Respondent/Plaintiff/Building Owner

This Execution petition having been finally heard on 19.07.2025 in the presence of Thiru.B.Siva, the learned counsel for the Petitioner/ Respondent/Tenant, Tmt.Sentamizh Selvi the learned counsel for the Respondent/Plaintiff/Building Owner, after perusal of the entire records and having stood over for my consideration till this day, this Court delivers the following:

ORDER

**This Petition was filed under Order XXI and Rule 26 and Section 151
of CPC**

1. The brief averments of the petition is as follows:

The petitioner is the respondent in the main execution petition. The petition has been filed to stay the further proceedings in the execution petition until the final disposal of the appeal R.C.A.NO.1/2020 pending before the Honourable Sub

Court of Devakottai. The petitioner claims that against the order passed by the court in R.C.O.P No.1/2017 on 05/02/2020, he has filed an appeal before the Honourable Sub Court of Devakottai with R.C.A. No. 1/2020 and the same has been taken up for hearing and is still pending. The petitioner claims that since the court of the Honourable Sub Court of Devakottai has been vacant for the past six months, he was not able to file his written statement and that he is ready to file his written statement. He also claims that since he has proved all the necessary requirements of the case by appointing an Advocate Commissioner in the trial court itself, he believes that he will get an order in his favour in the above said appeal. Hence, he prays to stay the further proceedings in the execution petition before this court until the final disposal of the appeal. He says that if this petition is not allowed, he will be subject to irreparable loss and injury. Hence he prays for the petition to be allowed.

2. Averments in the counter are as follows:

The respondent vehemently opposes all the averments in the petition and has claimed that the execution petition has been ordered for delivery. In the meanwhile when the amina went to recover the suit property, the judgment debtor has locked the property and has went outside. Hence now petition has been filed seeking VAO help and police help and the same are pending. He denies the allegations of the petitioner saying that since the post of Sub-Judge in the Honourable Sub Court of Devakottai has been vacant, He was not able to file written statement and says that hearing takes place on every friday in the Honourable Sub Court of Devakottai and despite giving sufficient opportunities to the petitioner he has not filed his written statement in the Honourable Sub Court of Devakottai and has been dragging on the proceedings. The respondent says that the petitioner having not taken appropriate steps in the appellate forum has sought for the stay of execution proceedings in the

executing court. Hence, he prays for the petition to be dismissed.

3. Whether the petitioner is entitled for the reliefs as prayed for?

3(i). Petition and counter perused. Enquiry heard. The petition has been filed under Order XXI, Rule 26 of Civil Procedure Code to stay the execution proceedings on the ground that an appeal against the decree in RCOP number 1/2017 has been filed in the Honourable Sub Court . The petitioner believes that he will get a decree in his favour in the appeal filed in the Honourable Sub Court. Hence, he prays for the executing court to stay the execution petition until the disposal of the appeal in the Honourable Sub Court. It is to be taken note of that a stay can be granted by the executing court under Order XXI, Rule 26 of Civil Procedure Code only for a certain period of time to enable the petitioner to approach the appropriate court and get a stay to stop this execution proceedings. The petitioner has provided a precedent and has requested this court to grant stay based on that precedent. The petitioner has submitted a copy of the judgment in the case of **M. Nazruddin vs The Idol of Arulmigu Navaneedha Krishnasami and Durgai Amman Vahaira Temples** by the Honourable High Court of Madras. The said judgment discussed in detail about a situation when a stay can be granted In an execution petition filed to enforce an ex-parte decree, when the judgment debtor has filed a petition to set aside the ex-parte judgment and decree in the main suit. That judgment will not be applicable to the case at hand. Because in the present case the petitioner has claimed for a grant of stay on the ground that appeal has been filed against the decree in the Honourable Sub Court and has sought for stay of execution proceedings until the final disposal of the appeal. Hence the above said precedent has no relevancy with the present case as both situations are different. As said before, it is to be taken into note that stay can be granted under Order XXI, Rule 26 by an executing court only for a limited period of time so as to

enable the judgment debtor to approach the appropriate forum and get a stay in his favour.

3(ii). At this juncture, it is important to take note of the case of **Syamala Vs Thapodhanan (Kerala HC, 22 Jan 2020)**, where the court stated: “It is settled law that Order XXI, Rule 26 Civil Procedure Code is applicable only to transfer decree. The power of the execution court to stay the execution is only upto to the stage of filing the appeal. Since the appeal was already filed, the court below had no jurisdiction to stay the execution petition in the absence of any order from the appellate court.” This was also reiterated by the Honourable Supreme Court of India on several occasions. Hence it becomes clear that an indefinite stay cannot be granted under Order XXI, Rule 26 Civil Procedure Code by the executing court. On reading the above said judgment it would be clear that such interim stay can be granted by the executing court only so as to enable the judgment debtor to approach appropriate forum for proper remedies.

3(iii). Once the proper forum has been approached and an appeal has been filed, the executing court cannot grant stay under Order XXI, Rule 26 Civil Procedure Code as the stay can only be granted by the appellate court under Order XXI, Rule 5. With respect to the same, it is also important to take note of the judgment in the case of **Best Sellers Retail (India) Pvt. Ltd. Vs Aditya Birla Nuvo Ltd., (2012) 6 SCC 792** where in the Honourable Supreme Court Of India has emphasized that the execution of a decree cannot be stayed indefinitely by any court except through specific orders of the appellate court as per the Code. This ruling also makes it clear that once when an appeal has been filed, the executing court cannot grant stay unless the appellate court has stayed the proceedings of execution proceedings in the present case. Since an appeal in the Honourable Sub Court of Devakottai has already been filed as R.C.A.NO. 1/2020, the executing

court has no power to grant an interim stay. Hence, a stay cannot be granted by the executing court unless one was granted by the appellate authority. Hence, in the interest of justice, this petition is dismissed and no order as to costs.

4. Decision

In the result, this petition is dismissed and no order as to costs.

This Order was dictated by me, typed by the steno-typist, corrected by me and pronounced by me in the open court on 19th day of July 2025.

**Sd/- Tmt.R.Premi
District Munsif
Devakottai**

Annexures:

List of witnesses on the side of the Petitioner/ Respondent-Nil

List of Documents on the side of the Petitioner/ Respondent-Nil

List of witnesses on the side of the Respondent/Plaintiff-Nil

List of documents on the side of the Respondent/Plaintiff-Nil

**Sd/- Tmt.R.Premi
District Munsif
Devakottai**

**District Munsif Court,
Devakottai**

E.A.No. 01/2022

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Dated: 19.07.2025

Draft/Fair Order
