

(2.1) The petitioner is the respondent in the execution petition. The execution petition has been filed against the Petitioner by the respondent to execute the decree passed in Original Suit No. 78/2018 for recovery of the advance amount, and the said petition is presently pending. On the date of hearing in the execution petition, an exparte order was passed against the Petitioner on 30.07.2021 on his absence. In fact, since 2020, the Petitioner have been working in Coimbatore along with his family. Due to the outbreak of the COVID-19 pandemic from March 2020 and during the second wave in 2021, he was infected with COVID-19 and under treatment from his home. Even after his health improved to some extent, he continued to suffer from nasal congestion and chest pain and have been receiving treatment intermittently.

(2.2) At present, the Petitioner have returned to his native village and came to know about the case details through third parties. Thereafter, he met his Advocate in person and became aware of the proceedings in the execution petition. He is ready and willing to pay the decree amount. His non-appearance before this Court was neither willful nor intentional, but was due to circumstances beyond his control. If the exparte order passed against him in the execution petition is not set aside, he will suffer irreparable hardship and loss. Therefore, it is necessary and just that this Court may be pleased to set aside the exparte order passed against him in the execution petition, in the interest of justice.

3. The Concise Statement made in the counter filed by the Respondent is as follows :

This E.A. itself is not maintainable. The Petitioner filed the petition to Section 5 of Limitation Act which is not maintainable in law. Further the Petitioner filed this false and frivolous petition to condone the delay of 1373 of days in filing the setting aside petition is nothing but to harass of this petitioner. The Petitioner who left from the suit village and also filed in Insolvency petition before this court. It is false to aver that the hearing date 30.07.2021 the Petitioner who unable to attend the hearing are all false and invented one. Further the Petitioner who affected the corona virus and ill health are all false and invented one for the purpose of this petition. The Petitioner from who he got the information about this E.P. proceedings is to be explained in the affidavit. Further the reasons averred in the affidavit to set aside the exparte order are all invented one. The reasons averred for the delay of 1373 days are all false and invented one. Each and every day delay must be explained by the petitioner with valid the acceptable reasons. The petition is devoid of merit.

4. No oral and documentary evidence let by both sides.

5. Point for consideration:

Whether this petition filed under Order 21 Rule 106 of C.P.C. to set aside the exparte order passed on 30.07.2021 in the execution petition is to be allowed or not?

6. Submissions, Discussions, Decisions with Reasons :

(6.1) Heard both sides, records perused. The learned Advocate for the petitioner submitted that this petition filed to set aside the exparte order setting him exparte in the EP. Due to the coronon lock down the Petitioner settled in Coimbatore and was not aware of the proceedings. He is ready to pay the EP amount and the delay in filing this petition is not willful but due to the reason that he was settled at Coimbatore and prayed to allow the petition.

(6.2) Per contra, the learned Advocate for the Respondent vehemently submitted that the Petitioner was set exparte after effecting the paper publication on 30.08.2023 and from then the case was posted for evidence on the Respondents/Petitioners side. The Respondent filed proof affidavit on 18.02.2025 and he was examined as PW1. When the Petitioner side evidence was closed and it was posted for arguments on 20.08.2025 immediately this petition filed on 25.10.2025 to set aside the exparte order on 30.08.2023. The Petitioner was watching the proceedings and filed this petition at the fag end, when the case was posted for arguments and vehemently opposed this application.

(6.3) The petition u/s Order 21 Rule 106 (3) CPC filed by the Petitioner to set aside the exparte order in the execution proceedings under the above provision of law when the notice was served, petition can be filed from the date when the Petitioner had the knowledge of the exparte order. An order under Order Rule 105(3) CPC is an order passed exparte when the opposite party does not appear. Where the opposite party does not appear, the court may set him exparte and there after, proceed to hear the application and pass orders. Order 21 Rule 105(3) CPC also says the court may hear the application exparte and pass such order as it things fit. The limitation

prescribed under Order 21 Rule 106 (3) CPC is to set aside an order passed in consequence of the opposite party being set exparte. Thus, if the opposite party is set exparte and if he appears before the disposal of the petition and requests to have the order setting him exparte such an application will not fall under Order 21 Rule 106(3) CPC, since an order setting the opposite party exparte is not an order under Order 21 Rule 106(3) CPC. It is only when an order is passed in the petition in consequence of the opposite party being set exparte, the provisions of Order 21 Rule 105 (3) and 106(3) stands attracted.

(6.4) Thus, the petitioner has approached this court pending EP proceedings under Order 21 Rule 106(3) CPC to set aside the exparte order and the limitation prescribed under Order 21 Rule 106(3) CPC does not apply to this case. In view of the facts and circumstances of this case and as per the direction given by the Hon'ble High court of Madras in Sundarambal vs. Kanagaraj in CRP No.808, 809/2025 dated 26.06.2025, this court is inclined to allow this petition.

7) In the result, this petition stands allowed on condition that the petitioner shall pay a cost of Rs.1,000/- to the respondent on or before 18.02.2026 failing which, this petition stands automatically dismissed. Call on 19.02.2026.

Dictated by me, directly typed by Steno-Typist into computer, corrected and pronounced by me in the open Court, this the 04th day of February 2026.

(Sd/-) G.Sree Devi,
Additional District Judge,
Theni.

Petitioners and Respondents side Witnesses and Documents : - Nil -

(Sd/-) G.Sree Devi,
Additional District Judge,
Theni.

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