

**IN THE COURT OF IV<sup>th</sup> ADDITIONAL DISTRICT JUDGE, UDUMALPET.**

**PRESENT: Thiru.M.Nambirajan,, B.A., B.L.,**

IV<sup>th</sup> Additional District Judge, Udumalpet.

Wednesday, the 30<sup>th</sup> day of July, 2025

**E.A.No. 1 of 2025 in E.P.No.13 of 2023**

1. Maruvloor Arasi Textiles Pvt.Ltd.

Rep.by its M.D.N.Karthikeyan

2. N.Karthikeyan,

3. N.Venkatraman

4. N.Raghupathy

... Petitioners/Respondents

Vs.

M/s.Subhodh Jamanlal Goenka..

Akola

... Respondent /Petitioner

This Petition came before me for final hearing on 10.07.2025 in the presence of Thiru.I.Dhayanidhi, Advocate for the Petitioners/Respondents and Thiru.N.Satish Kumar, Advocate for the Respondent/ Petitioner and having heard both sides and on perusal of the records and having stood over for consideration till this day, this court delivers the following :-

**Order**

This petition is filed under Order 21 Rule 105 CPC to set aside the exparte order passed as against the petitioners/respondents.

**2. Precis on the petition:-**

The Petitioners are the Respondents in the EP. The above said EP.No.13/2013 was posted on 12.12.2024 for filing vakalath for 1<sup>st</sup> Respondent and counter of other respondents and on 12.12.2024 petitioners advocate has gone to Coimbatore to attend a important case and even though a affidavit and petition was filed on 12.12.2024 for adjournment, but this court was reject the petition and set exparte of all the respondents and that the non filing of vakalath and counter for the respondents is neither willful nor wanton but only for the reason mention above and not due to any other reason. Vakalath for R1 and

counter of R2 to R4 are also filed along with this petition, which may be kindly accepted. If the ex parte order passed by this court on 12.12.2024 is not a aside and the EP is taken on file, we will be put to great hardship and loss. Hence this petition.

**3. Counter statement filed by the respondent/ petitioner:**

**3.1)** The petition is filed by the petitioners/respondents in E.P herein is false, frivolous, and vexatious and not maintainable in the eye of law. Petitioners/respondents in E.P are trying to mislead this court with concocted facts and illusions. This petition filed by this petitioners/respondents in E.P.is liable to be dismissed on its teeth and this petitioners/respondents in E.P. should not be restored into the case as sufficient time was already given by this court and that the date of filing of this present case was 03.03.2023 and the first hearing of the case was also commenced on the same day and they have neither shown any appearance nor taken any steps on their behalf until 03.01.2025 which is almost 2 years (22 months) from the date of filing of this present case and from the date of filing of this case till 03.01.2025, a total number of 13 hearings had been completed by this court and petitioners/ respondents in E.P. has never shown their presence before this court and they were called absent before this court.

**3.2)** The petitioners/respondents in E.P.in their affidavit claiming that their advocate has gone to Coimbatore to attend a important case on 12.12.2024 is just a matter of excuse claimed by this petitioners/respondents in E.P. as no valid reason was shown why there was a delay of almost 2 years (22 months) to file Vakalath and counter on their side. This fact itself is a valid ground to set the petitioners/respondents in E.P.ex parte by this court. On 12.12.2024, the petitioners/respondents in E.P.were called absent and set ex parte as Vakalath and Counter were not filed by the petitioners/respondents in E.P. The diary extract would reveal that sufficient time and chances were given by this court to

the petitioners/respondents in E.P. and they have failed to comply with the orders of this court up until 03.01.2025.

**3.3)** It is a well settled principle of law that “ignorantia juris non excusa” which means ignorance of law is no excuse. Therefore, this hon’ble court was right in setting the petitioners/respondents in E.P. as ex parte vide order dated 12.12.2025 and moreover also it is a well settled principle of law that “Vigilantibus non dormientibus jura subveniunt” which means the law aids only the vigilant, not those who sleep on their rights. Therefore, this petitioner/respondent in E.P. now should not get benefit through any leave of this court as they have slept on their rights by neither filing any counter nor filing vakalath for a period of almost 2 years. Hence, this petition is liable to be dismissed.

**4.** Point for consideration is, whether the petition can be allowed or not?

**5.** Heard perused.

**6.** It is contended by the learned petitioner counsel that the original execution petition had posted on 12.12.2012 for filing of counter by the petitioners/respondents and that due to the non available petitioner’s counsel, the petitioners could not be filed a counter on that day and the petitioners had filed a adjournment petition on that day, but unfortunately the same had been dismissed and ex parte order had been passed by this court on the same day, hence, the petitioners has filed this application set aside the ex parte order passed against them.

**7.** On the other hand the Learned respondent counsel has strongly objected allowed this application and he has argued that the contention of the petitioner is not maintainable and that the respondent has filed this execution petition before 22 months and one another way, the petitioners had intentionally delayed the proceeding of the execution petition and the reason assigned by the petitioners for non available of the counsel has not a ground for non filing of

the counter. Therefore, this petition is liable to be dismissed.

8. On considering the both sides submissions and perusal of the available materials, it is revealed that the respondents has filed execution petition to enforce the decree passed against the petitioners in E.P.No.13/2023 and due to the non filing of the counter by the petitioners on 12.12.2024, this court was passed exparte order against the petitioners in the above said execution petition. In the circumstances, it is argued by the petitioners that, the petitioners counsel had gone to coimbatore for attending important case, hence, they could not be filed counter within stipulated time. On considering the above said contention, this court viewed that non available the counsel, is not a ground to justify non filing of the counter in the E.P proceedings. Anyhow, in the interest of justice, and in order to decide the real dispute between the both parties, this petition will be allow. On considering inconvenience of the respondent this petition is allow on the following conditions:-

**Result:-**

In the result, this petition will be allowed on payment of cost of Rs.3000/- to the respondent on or before 12.08.2025 failing which, this petition shall stands dismissed. Call on 12.08.2025.

Dictated by me to the Steno-Typist, transcribed in Short-hand, computerized by her and corrected by me and pronounced in the Open Court on this the 30<sup>th</sup> day of July, 2025.

Sd/-M.Nambirajan,  
IV<sup>th</sup> Additional District Judge,  
Udumalpet.

**Both sides witness and Exhibits :** Nil.

Sd/-M.Nambirajan,  
IV<sup>th</sup> Additional District Judge,  
Udumalpet.

Fair/ Final Order  
EA No.1/2025 in E.P.No.13/2023  
D.D:30.07.2025  
IV<sup>th</sup> ADJ Udumalpet