

**III ADDITIONAL DISTRICT AND SESSIONS COURT,
TIRUVALLUR AT POONAMALLEE.**

Present : **Thiru.C.VIJAYAKUMAR, B.A., B.L.,**
III Additional District and Sessions Judge

Thursday, the 26th day of February 2026

**E.A.No 3 of 2025
in E.P.No.15 of 2023
in ARC.No.628 of 2010**

1) Mr. V.Veeravel, S/o. E.R. Vellaichamy,

... Petitioner /
Respondent/ Judgment Debtor.

-VS-

Margadarsi Chits Private Limited,
Represented by it's Foreman,
No. 13-A, III floor, Kaashyap Enclave,
Velachery Main Road, Velachery,
Chennai – 600 042.

...Respondent /
Petitioner / Decree Holder.

This petition came up before this Court for final hearing on 21.01.2026 in the presence of M/s. P. Sevanandi learned counsel for the Petitioner / Respondent / Judgment Debtor, K. Senthil learned counsel for the Respondent / Petitioner / Decree Holder and upon hearing petitioner side arguments and having stood over for consideration till this day, this court passed the following:

ORDER

This petition, filed under Order 21 Rule 106 of the CPC, prayed to set aside the exparte order passed by this court on 04.06.2025 against the petitioner.

2) A short brief of affidavit filed by the petitioner in support of the petition :-

The petitioner herein is the is defendant in the above execution petition and stated that, E.P. No. 15 of 2023 was filed for the sale of immovable property. They were unable to file a counter or attend court on June 4, 2025, due to viral fever. As a result of this absence, the court passed an ex-parte order against them. The petitioner clarified that their failure to appear was neither willful nor wanton. It was instead due to the aforementioned bona fide medical reasons. They asserted that the absence was unintentional and justified by their condition. Therefore, the petitioner filed this petition to set aside the exparte order passed by this Court on 04.06.2025. Hence, the petition.

3) A short brief of Counter Statement filed by the respondent:-

The respondent denied all allegations made by the Petitioner/JD1 and demanded strict proof. They submitted that the application to set aside the ex-parte order of June 4, 2025, was merely a delay tactic, as the Petitioner had failed to file a counter or appear despite having ample time since March 2024. The respondent contended that the Petitioner's claim of illness lacked supporting documentary evidence and was therefore false. Furthermore, the application was deemed non-maintainable because it was not accompanied by the required counter in the main EP and was also barred by limitation. It contended that the Decree Holder, dealing with public funds and prompt subscribers, would be deprived of the decree's benefits if such tactics were permitted. Hence this petition is liable to be dismissed.

4) On the side of the Petitioner/Decree Holder and Respondents/ Judgment Debtors, no witnesses were examined and no documents were marked.

5) Now the point for consideration before this court is whether the petition filed under order 21 Rule 106 of CPC can be allowed or not ?

6) POINT :

Both sides heard. Records perused.

7) This petition, filed under Order 21 Rule 106 of the CPC, prays to set aside the exparte order passed by this court on 04.06.2025 against the petitioner/judgment debtor. On the said date, while the decree holder's /Respondent counsel appeared, there was no representation on behalf of the judgment debtor, nor was a counter affidavit filed. Consequently, this court set the judgment debtor exparte. Aggrieved by the said order, the judgment debtor has preferred this application to set it aside.

8) The petitioner herein is the Respondent / Judgment debtor in the main execution petition which was filed for recovery of sum of Rs 52,83,498/ and he was set exparte on 04.06.2025, since the Petitioner / Respondent failed to file the counter. Now, the petitioner filed this petition under order 21 rule 106 of CPC to set aside the aforesaid order passed by this Court. In view of the above, the relevant provision of Order 21, Rule 106 is extracted hereunder:

106. Setting aside orders passed ex parte, etc. :-- (1) The applicant, against whom an order is made under sub-rule (2) of rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the

Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.

9) The core issue to be decided is whether this petition, filed on 10.09.2025 to set aside the exparte order dated 04.06.2025, is maintainable in light of the statutory period of limitation prescribed under Order 21 Rule 106(3) CPC.

10) This Court is bound by the principles laid down by the Hon'ble High Court of Madras in its recent judgment in *C.R.P.Nos.808 & 809 of 2025 (Sundarammal and another v. Kanagaraj and another)*, dated 26.06.2025. and the Hon'ble High courts *Roc.No.81478/A/2025/F1 Dated: 11.09.2025*.

11) The Hon'ble High Court, after a detailed analysis of the legal history, has authoritatively held that the proviso to Rule 105 of Order 21 CPC (which previously allowed courts to condone delay) introduced by the Madras High Court Amendment in 1972, stands repealed after the Central Amendment of 1976.

12) Consequently, the Hon'ble High Court has clarified that, as the law stands today, the provisions under Order 21 Rule 106(3) CPC alone prevail. An application to set

aside an ex-parte order in execution proceedings must be filed within 30 days. The Execution Court has no power to condone the delay beyond this statutory period.

13) In the present case, the ex-parte order was passed on 04.06.2025. The petitioner has filed this application to set aside that order on 10.09.2025. Even if this Court considers the most liberal interpretation of the limitation period, the application is hopelessly barred by time, having been filed 98 days after the order. This is far beyond the prescribed limit of 30 days. The petition was filed with 68 days delay and this court lacks the jurisdiction to condone it.

14) In light of the binding precedent set by the Hon'ble High Court, the mere fact that the petitioner was set ex parte due to illness on 04.06.2025, even if accepted as a sufficient cause for his absence on that day, cannot cure the fundamental defect of the petition being filed beyond the statutory period of limitation.

15) Accordingly, this petition is not maintainable and is liable to be dismissed on the ground of limitation alone. The arguments regarding the merits of the ex-parte order or the reasons for the petitioner's absence on 04.06.2025 need not be adjudicated upon, as the petition is barred by limitation at the threshold.

16) In the result, this petition is dismissed as barred by limitation. No order as to costs.

Dictated to steno-typist directly, typed by him in computer, corrected and pronounced by me in the Open Court on this the 26th day of February 2026.

**III Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Exhibits and Witnesses on both sides :- Nil.

**III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.**