

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

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

Tuesday, the 7th day of April 2026

**E.A.No. 2 of 2025
in E.P.No.136 of 2021
in O.S.No.2057 of 2020**

1) Mr. Jaishankar, S/o. Kasi,
2) Amudha, W/o. Jaishankar,
both 1 & 2 having address at,
Old No. 567, New No.918.
Door No. D/3, Aadharsh Apartment,
Poonamallee High Road,
Arumbakkam, Chennai – 600 106.
3) Saranya, D/o. Srinivasan,
4) Sangeetha, D/o. Srinivasan,
Both 3&4 having address at No.3,
Thiru. Vi.Ka. Street,
Razack Garden Main Road,
Arumbakkam, Chennai – 600 106.

... Petitioner / Judgment Debtor.

-VS-

R.S.A. Kalimuthan, S/o. Azhagan,
D.No.47, Old No.13/2,
Adhikesava Perumal Kovil Street,
West Mambalam, Chennai – 600 033.

... Respondent / Decree Holder.

This petition came up before this Court for final hearing on 25.03.2026 in the presence of M/s.K.S. Abishek learned counsel for the Petitioner / Judgment Debtor, M/s. R. Subramaniam, V. Tamilselvi learned counsel for the Respondent / Decree

Holder and upon hearing both side arguments and having stood over for consideration till this day, this court passed the following:

ORDER

This petition, filed under Order 21 Rule 26 of the CPC, prayed to stay further proceedings of the above execution petition in E.P.No.136 of 2021 till the disposal of the petition to set aside the exparte decree in O.S.No.2057 of 2020.

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

The 2nd petitioner herein is the 2nd Judgment Debtor in the above execution petition. The respondent/plaintiff filed the above suit for recovery of money a sum of Rs.20,30,000/- with interest at the rate of 18% p.a from the petitioners herein. It is the contention of the Petitioners that, the summons were not served to them. Consequently, the XIX Additional City Civil Court, Chennai passed exparte Judgment in the above suit on 17.04.2021. Subsequently, the Respondent/plaintiff filed this execution petition. In the meanwhile, the petitioners has filed a petition to set aside the exparte decree passed in O.S.No. 2057/2020 dated 17.04.2021 along with condone delay petition in I.A.No.2/2024. The above petition was pending before the XIX Additional City Civil Court, Chennai. Therefore, the petitioners filed the petition to stay the proceedings in the above execution petition till the disposal of the set aside petition. Hence, the Petition.

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

The respondent submitted that, the suit had been decreed on 17.04.2021, by the XIXth Additional City Civil Court in Chennai. Subsequently, the Judgment Debtor filed an application under Section 5 of the Limitation Act to set aside the decree, which was ultimately dismissed by the court on 21.02.2025. It was further noted that the Execution Petition property had already been attached and a surveyor's valuation report had been submitted to the court. Furthermore, it was submitted that the Judgment Debtor had previously appeared before the court and undertaken to pay the E.P. amount in five installments. Consequently, the deponent maintained that the stay petition was not maintainable following the dismissal of the Section 5 Limitation Act application. 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 26 of CPC can be allowed or not ?

6)POINT :

Both sides heard. Records perused.

7) This petition, filed under Order 21 Rule 26 of the CPC, prays to stay further proceedings in the E.P.No.136/2021 till the disposal of the set aside petition which was filed by the Petitioners/Judgment Debtors herein before the XIX Addtional City Civil Court, Chennai.

8) Before the discussion on the contentions of the both sides, Order 21 Rule 26 CPC reads as follows : When Court may stay execution.—

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

The specific language of Order XXI Rule 26(1) of the Code empowers the executing court to grant stay for a limited period to enable the judgment-debtor to prefer an appeal, which is precisely what had been done in the present case.

9) The judgment had filed a set aside petition before the trial court and prayed to grant stay for the current execution petition till the disposal of the said set aside petition. On the contrary, the respondent stated that, the court dismissed the Petitioner's application to set aside the decree under Section 5 of the Limitation Act on 21.02.2025. When the section 5 petition was dismissed, no case status or order of the trial court was filed by either party . The basis for execution of the decree was not granted by this court, as the decree was granted by the XIX City Civil Court, Chennai. In these circumstances the Hon'ble High Court of Madras in the case of

Murugan vs Perumal on 21 February, 2018 Indian Kanoon -
<http://indiankanoon.org/doc/167369228/> **C.R.P.(PD)(MD)No.370 of 2018 and**
C.M.P.(MD)No.1650 of 2018 held that,

Para 7. Moreover, the Hon'ble Apex Court in the judgment reported in AIR 2001 SC 279, has held that decree becomes enforceable from the date of passing and mere preferring of an appeal does not act as a stay on the decree. In the present case on hand, though I.A.No.526 of 2017 was filed to set aside the ex-parte decree, the said interlocutory application is kept pending, without any action and therefore, the same does not confer any right to the petitioner to stall the execution proceedings.

When this court applied the above in the present case, though the petitioner has filed a Section 5 petition and an Order 9 Rule 13 set-aside petition, the stage of the petition was not mentioned by the petitioner. Although the respondent stated that the Section 5 petition was dismissed, and this was not denied by the petitioner's side, this court concluded that the Section 5 petition was dismissed by the trial court. Hence, the present petition for stay under Order 21 Rule 26 is not maintainable.

10) And also the Hon'ble High Court of Patna in the case of **Basant Kumar & Anr. v Harendra Manjhi CIVIL MISCELLANEOUS JURISDICTION No.320 of 2021** observed that,

The Court noted that Order XXI Rule 26 of the Code confers power to the executing court to stay the execution of the decree for a reasonable time on sufficient cause being shown to enable the judgment debtor to apply to the court by which the decree was passed or to any court having appellate jurisdiction in respect of decree or the execution thereof, for an order to

stay the execution. The Court observed that since the petitioners had already filed a miscellaneous case under Order IX Rule 13 of the Code for setting aside the ex-parte decree, there could be no application of Order XXI Rule 26 of the Code in the facts of the present case.

11) In light of the above principle under Order 21 Rule 26 of the CPC, the execution court has the power to stay the execution to enable the judgment debtor to approach the trial court. However, when the petitioner has already approached the trial court by filing a set-aside petition, this provision is not applicable. Applying this to the present case, since the judgment debtor has already approached the trial court and filed a Section 5 petition and a petition to set aside the decree, the remedy under Order 21 Rule 26 of the CPC is not available to the petitioner.

12) In the result this petition is dismissed without cost.

Dictated to steno-typist directly, typed by him in computer, corrected and pronounced by me in the Open Court on this the 7th day of April 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.**