

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

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

Wednesday, the 18th day of March 2026

**E.A.No 1/2026
in E.P.No.152 of 2022
in O.S.No.459 of 2021**

Mr. Gunuvanth Kumar, S/o. Parasmal,
No. 18/23, Thiru Nagar,
Villivakkam, Chennai – 600 049.

... Petitioner
Petitioner / Decree Holder.

-VS-

Mr. K. Kanna Rao, S/o. P.S. Kabali Rao,
Plot No. 14, Indira Nagar, Menambedu,
Ambattur, Chennai – 600 053.

...Respondent /
Respondent / Judgment Debtor

This petition came up before this Court for final hearing on 19.02.2026 in the presence of M/s. A.M. Krishnamoorthy, K. Sundaravalli, M. Premkumar, B. Rekha learned counsels for the Petitioner / Petitioner / Decree Holder, Respondent / Respondent / Judgment Debtors set *exparte* on 18.12.2025, 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 r/w Section 151 of the CPC, prayed to restore the E.P. No. 152/2022 which was dismissed for default on 25.11.2024.

2) A short brief of affidavit accompanying with the review petition :-

The petitioner was the decree holder in the execution petition had filed a suit for the recovery of money against the Judgment Debtor which was decreed in favor of the plaintiff / petitioner herein. Despite notice being sent in the execution petition, the J.D. failed to appear, was set ex-parte, and an attachment was ordered. Although the petitioner paid the Batta on October 3, 2024, they were unable to accompany the Bailiff due to a spinal problem, and the Bailiff was also not ready to execute the warrant of attachment at that time. It is the contention of the Petitioner, on November 25, 2024, the petitioner's counsel represented the matter in the morning session, but after it was passed over, they did not appear later, under the impression that the court would grant further time for the attachment. Hereafter, he came to know through E-courts proceedings that the matter had been dismissed for default. They maintained that the non-appearance was neither willful nor wanton but due to the aforementioned circumstances. The petitioner asserted that unless the petition for restoration was allowed and E.P. No. 152/2022 was restored to the file, they would suffer irreparable loss and hardship, while no prejudice would be caused to the respondent. Therefore, the petitioner prayed to restore the execution application. Hence, the petition.

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

4) Now the point for consideration before this court is whether the petition filed under order 21 Rule 106 (1) r/w section 151 can be allowed or not ?

5) POINT :

Both sides heard. Records perused.

6) The petitioner herein is the Decree holder and filed this petition to restore the above EP which was dismissed as default by this Court on 25.11.2024 when the execution petition is posted for fresh attachment batta. Since the petitioner is failed to appear before this Court and did not make any representation on his side. Now the petitioner came up with the present application under order XXI rule 106 r/w 151 of CPC to restore the above execution petition. Though the respondents set exparte the petitioner is not entitled to an automatic order simply because the respondents were set ex parte.

7) The Decree Holder had earlier filed E.P. No. 152 of 2022 before this Court for execution of the decree. During the course of the said execution proceedings, when the matter was posted for taking further steps in the attachment process, this matter was posted for fresh attachment batta. Owing to inadvertence and inability to comply with the said direction within the time granted, and not appeared before this court the said Execution Petition came to be dismissed for default. The said dismissal was not

on merits of the execution proceedings nor under Order XXI Rule 105 CPC, but only for non-prosecution.

8) This court heard the arguments advanced on petitioner side and perused the records meticulously. However, it is a settled principle of procedural law that the present application under Order 21 Rule 106 CPC is concerned only with the restoration of the petition that was dismissed for default. Already in the main E.P matter was posted for fresh attachment batta and on that stage the execution application was dismissed for default. Since for a long time the decree holder neither appeared before this Court nor make any representations.

9) The primary legal aspect to be examined is whether the application is maintainable under the provisions of Order 21 Rule 106 CPC. A perusal of the records reveals that the Execution Petition was dismissed for default on 25.11.2024. The present petition to restore the same was filed on 27.11.2024. Order 21 Rule 106 CPC prescribes a specific period of thirty days for filing an application to set aside an order of dismissal passed under Rule 105.

10) This Court takes judicial notice of the fact that the instant petition has been filed on 27.11.2024. Counting the days from the date of the order (25.11.2024), the petition filed on 27.11.2024 is well within the 30-day statutory period prescribed by law. Therefore, the petition is perfectly within the period of limitation, and the question of condoning any delay does not arise at all.

11) Regarding the reason for the Petitioner/Decree Holder's absence on 25.11.2024, the petitioner has stated that the petitioner had already paid the Batta on October 3, 2024, but could not accompany the Bailiff due to a spinal injury. On the hearing date, counsel appeared in the morning session but missed the later call under the mistaken belief that the court would grant an extension for the attachment and the non-appearance was neither willful nor wanton. In the affidavit, he has explained the circumstances that prevented his appearance. This Court finds the explanation to be bona fide and satisfactory. Since, the respondent set exparte, the contentions of the petitioner were not contested and the respondent did not show any objection to restore the above E.P.

12) For the foregoing reasons, this Court is satisfied that the petitioner/decree holder has made out a sufficient cause for her non-appearance on 25.11.2024. Since the petition has been filed within the statutory period and the explanation for absence is acceptable, the prayer for restoration deserves to be granted.

13) In the result, this petition is allowed. The order of dismissal dated 25.11.2024 in E.P. No. 152 of 2022 is hereby set aside. The Execution Petition is restored to its original number on the file of this Court .

Dictated to steno-typist directly, typed by him in computer, corrected and pronounced by me in the Open Court on this the 18th day of March 2026.

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