

The petitioner is the respondent in the Execution petition and defendant in the main suit. The respondent/petitioner/plaintiff filed the main suit for the relief Specific performance. The above case in O.S. No. 33/2023 was decided on 02.04.2025 and the petitioner had decided to file an appeal before Madurai Bench of Madras High Court, against the said judgment and filed a petition to obtain the

copy of judgment. At that time, the plaintiff had filed an Execution petition to purchase and execute a sale deed. The Execution petition was adjourned to 21.07.2025 for filing counter. The counsel for the petitioner also informed the same to the petitioner. The petitioner had tried to arrange money to file an appeal, but it has been delayed and he also forgot the due date for filing the counter. Now only he has arranged the money and when he approached his counsel, he came to know that an exparte order was passed against him on 21.07.2025 due to non filing of counter. The above mistake is neither wilful nor wanton. Now he has filed the counter to the Execution petition. Hence this petition has been filed to set aside the exparte order passed against him along with a condone delay petition.

3. The Brief averments of the counter filed by the respondent is as follows :

3.1 The averments that the petitioner had tried to arrange money to file an appeal, but it has been delayed and he also forgot the due date for filing the counter and now only he has arranged the money and when he approached his counsel, he came to know that an exparte order was passed against him on 21.07.2025 are all denied as false. In the original suit, judgment has been passed on 02.04.2025. In the judgment, it is ordered that the respondent/plaintiff should pay the remaining sale consideration within 2 months and hence the respondent/plaintiff has deposited the remaining sale consideration in the court and filed the Execution petition. In the Execution petition on 21.07.2025 the petitioner appeared before the court in person along with his counsel and got adjournment for filing counter. Thereafter, for filing counter, he got an adjournment on 19.08.2025 and 02.09.2025 through his counsel and the court suomoto adjourned the petition on 15.09.2025 and 08.10.2025. The petitioner has deliberately not participated in the proceedings. Hence it is clear that the petitioner has no interest in proceeding the case.

3.2 The petitioner has monitoring the Execution case proceedings on every date and every stage through online. When the respondent/plaintiff has taken steps to register the sale document, the petitioner has filed this petition only to delay the time. The respondent/plaintiff has purchased a non judicial stamp paper for Rs.78,750/- to register the sale and submitted the same before this court on 06.03.2026. The stamp paper is valid only for a specific period. Further, the remaining sale amount of Rs. 6,15,000/- has also been deposited in the court. Furthermore, there is no appeal pending before the Madurai Bench of Madras High Court. The petitioner has not given sufficient reasons in the petition for each and every day delay. Hence prays to dismiss the petition.

4. Point for Determination :

Whether this petition deserves to be allowed or not.

Heard both sides. Records perused. No Oral and Documentary evidence adduced by both sides.

5. This is an application filed by the petitioner/judgment debtor seeking to set aside the exparte order passed against him on 21.07.2025. Along with this application, the petitioner/judgment debtor also filed an application seeking to condone the delay of 198 days in filing a petition to set aside the exparte order. In support of the applications, the petitioner/respondent/defendant contended that he had talked with his counsel and his counsel also informed that the case was adjourned to 21.07.2025 for filing counter. But in order to mobilize money to prefer an appeal, he sought time for filing counter. Unfortunately he has been set exparte for not filing of the counter. Now the petitioner has filed this set aside petition along with the counter to the Execution petition. On the other hand the respondent denied the petition by stating that this petition has been filed only in order to delay the execution proceedings and contended that there is no merits in this petition and prays to dismiss this petition.

6. By perusing records, it found that originally the respondent/decreed holder/plaintiff had filed a suit in O.S. No. 33/2023 seeking for the relief of specific performance. Already the decree holder deposited the sale consideration before the trial court and after that the suit was allowed on 02.04.2025, thereby the decree holder filed an Execution petition before this court and in which notice has been ordered and the respondent/judgment debtor had entered appearance before this court on 21.07.2025 and sought time for filing counter. Thereby the proceeding was adjourned for filing counter by the respondent on 19.08.2025, 02.09.2025, 15.09.2025, 08.10.2025 and 23.10.2025. In the above hearing dates, on 08.10.2025, there was no representation for the respondent and it has been informed to the respondent by way of Notes paper adjudication stating that if the respondent has not come forward to file counter, then further orders will be passed on 23.10.2025. On 23.10.2025, the respondent has not come forward to file his counter. From 21.07.2025, the Execution petition was adjourned only for filing of counter by the respondent/judgment debtor. Since the petitioner/respondent/Judgment Debtor has not come forward to file counter he was called absent and set *ex parte*. If at all the petitioner/respondent/judgment debtor contended that he was unable to inform or give instruction to his counsel, then he ought to have immediately filed the set aside application. But the present application has been filed only on 06.03.2026 and the reason assigned in the petition is that the petitioner/respondent was mobilizing money to prefer an appeal, but there was no mentioning about whether appeal was preferred as against the decree before the competent court. If it is so the details of stage of said appeal was neither pleaded nor proved. Not even the Appeal number or S.R. Number was neither mentioned in the pleadings nor submitted to this court during the course of arguments.

7. In the Execution petition, already the respondent/decreed holder has filed sale paper on 09.01.2026 and the same was accepted and the Execution petition is in final stage. At this stage, this petition has been filed only in order to

drag on the proceedings. If the petitioner is interested to contest the execution petition, then he ought to have preferred an appeal before the appellate court in expeditious manner. But, the act of the petitioner/respondent does not inspire the confidence of this court that he is a bonafide litigant to protect his right. On the other hand the act of the petitioner/respondent amount to prolong the litigation by one way or other. It is a settled proposition that Justice not only to be done, but seems to be done. The Decree Holder who obtained the decree has failed to realize the fruits of the decree by way of this protracting interlocutory application filed by the petitioner/Respondent/Judgment Debtor. The Hon'ble Apex Court has categorically held in various decisions that each and every day delay has to be properly explained with supporting necessary documents. The reason assigned for belatedly filing this petition was also not properly explained. There is no merits in this petition. Hence this court feels that the present petition is devoid of merits and the same is liable to be dismissed. Accordingly, this petition is dismissed.

8. In the result, this petition is dismissed, No cost.

Dictated by me to the steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, on this the 27th day of April, 2026.

Additional District Judge
Aruppukottai.

List of Witness and Exhibits on the side of the Petitioner: Nil.

List of Witness and Exhibits on the side of the Respondent: Nil.

Additional District Judge
Aruppukottai.