

**In the Court of the I Additional Subordinate Judge, Salem**

**Present : Thiru. K. Vivekananthan, LL.M.,**  
I Additional Subordinate Judge,  
Salem

**Wednesday, this the 27<sup>th</sup> day of September 2023**

**E.A.No.2/2022 in E.P.No.2/2021**

**in**

**ACP No.106 of 2020**

**(CNR No.TNSA05-000048-2021)**

G. Parvathi .. Petitioner / Respondent / Judgment Debtor  
/ vs. /

Manapuram Asset Finance Limited,  
D.No.III/105, Opposite Nattila Firka  
Co-operative Rural Bank, near Chanthapadi  
Junction, Valapad (post), Trissur, Pin 680 567  
represented by its Field Officer S. Boopathi

.. Respondent / Petitioner / Decree Holder

This petition is coming before me on 21-09-2023 for final hearing in the presence of Thiru. N.S. Suresh, Advocate for the petitioner and Thiru. J. Ferozz, Advocate for the respondent, upon perusing the documents and heard both side arguments and having stood over till this day for consideration and this court delivers the following:

**ORDER**

This petition has been filed under Order 21 Rule 106 of CPC seeking for the order as to set-aside the exparte order dated 02-09-2021 passed by this court.

2. **The petition averments in a nutshell are that :**

The petitioner herein is the judgment debtor in E.P. No.2/2021. The present respondent / decree holder has filed this execution petition seeking for the order as to attach the execution petition property to sell the same

in the court auction for the realization of the award amount. In fact, the 1<sup>st</sup> respondent in the execution petition is the principal borrower and the present petitioner is mere guarantor. After the receipt of notice in the execution petition, the petitioner has entered into appearance through her counsel. Due to the old age and ill health, the petitioner was unable to contact her counsel to file counter statement. Now, on 27-08-2022, the petitioner came to know about the exparte order dated 02-09-2021 passed by this court against the present respondent. Therefore, it is just and very necessary to set-aside the exparte order dated 02-09-2021 passed against the present petitioner. Hence, this petition.

3. **The counter statement averments filed by the respondent in a nutshell are that :**

This petition is not maintainable either under law or on facts. It is admitted that the present respondent has filed execution petition against the present petitioner seeking for the order as to attach the property and sell the same in the court auction for the realization of the award amount. However, it is false to state that due to old age and ill-health, the petitioner was unable to contact her counsel to file vakalat and counter statement in the execution petition. The exparte order was passed on 02-09-2021 and the petitioner ought to have file the petition to set-aside the exparte order within 30 days. However, the petitioner has come forward with the inordinate delay. Therefore, the present petition may be dismissed with costs.

4. **Point for determination :**

Whether the exparte order dated 02-09-2021 is liable to be set-aside ?

5. **Discussion :**

Admittedly, the petitioner herein is the judgment debtor in execution petition in E.P. No.2/2021 which has been filed by the present respondent / decree holder seeking for the order as to attach petition mentioned property for the realization of the award amount.

6. It is evident from the records that this court has issued notice to the present petitioner and after the service of notice, on 25-03-2021, the counsel for the petitioner undertook to file vakalat for the present petitioner before this court. Further, the petition has been posted several hearings upto 02-09-2021 for filing vakalat and counter statement. However, the present petitioner has not filed his counter statement and therefore this court has set the present petitioner as exparte.

7. Now, the petitioner has come forward with the present application along with counter statement in main execution petition seeking for the order as to set-aside the exparte order passed against him. The respondent has *inter alia* resisted the petition stating that the petitioner ought to have file this application within 30 days. However, the petitioner has come forward with the delay of one year for filing the petition to set-aside the exparte order and therefore, the same is liable to be dismissed.

8. At this stage, it is pertinent to reproduce under Order 21 Rule 106 of CPC hereunder :

**Order 21 Rule 106 of Code of Civil Procedure 1908 -**

**Setting aside orders passed exparte, etc**

*“(1) The applicant, against whom an order is made under sub-rule (2), Rule 105 or the opposite party against whom an order is passed exparte 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 or 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 exparte order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order.”*

9. A close reading of above rule would make clear that the petitioner should have filed the application to set-aside the exparte order within 30 days from the date of exparte order. However, the petitioner herein has filed the present petition only on 30-08-2022 nearly one year delay from the date of exparte order. As per the amendment of **our Hon'ble High Court of Madras** in the proviso of Order 21 Rule 105(3), the petitioner

could file petition to condone the delay in filing application under Order 21 Rule 106 of CPC. However, the petitioner in the present case has not filed any such application under Order 21 Rule 105 of CPC and therefore, the present petition to set-aside the exparte order is not maintainable and liable to be dismissed. Accordingly, this point is answered.

**In the result, this petition is dismissed. No costs.**

Dictated by me directly to the steno-typist, typed by her in computer, corrected and pronounced by me in the Open Court, this the 27<sup>th</sup> day of September 2023.

(Sd./ K. Vivekananthan)  
I Additional Subordinate Judge,  
Salem

Petitioner's side witness and exhibit : - Nil -

Respondent's side witness and exhibit : - Nil -

(Sd./ K. Vivekananthan)  
I Additional Subordinate Judge,  
Salem

This is the True Copy of Order