

**IN THE COURT OF THE II ADDITIONAL SUBORDINATE JUDGE,
VILLUPURAM.**

**Present: Thiru.A. Tamilselvan, M.L.,
II Additional Subordinate Judge, Villupuram(FAC).
Thursday, the 2nd day of November 2023**

**IA No. 252 of 2023
in
OS No. 542 of 2022
(CNR.No.TNVP02-001460-2022)**

Saravanan

..... Petitioner / 2nd Defendant

//Vs//

T. Sundaramoorthy

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..... Respondent/ Plaintiff

This petition having been taken on file on 13.04.2023 and came up for final hearing on 12.10.2023 in the presence of Mr. R.Venkatesa Rao, Learned Advocate on behalf of the Petitioner/ 2nd Defendant and Mr.V.G.Thulasingham, Learned advocates on behalf of the Respondent/Plaintiff, upon perusing the case records, upon hearing arguments of both side and having been stood over for consideration till this date, this court delivered the following:-

ORDER

The Petitioner/Defendant has filed this petition under Order 9 Rule 7 CPC to pass setting aside the ex-party order dated 16.03.2023 passed against petitioner and permit him to contest the case by taking his written statement on record and thus render justice.

2. The petition in Brief is as follows:-

The petitioner is Defendant in the suit. The Respondent/Plaintiff has filed original suit for Recovery of money. The Petitioner working at present as an Assistant Engineer at Ulundurpet Block devolvment Office, whereas due to the

heavy workload during the past two months. He could not able to give proper instruction to prepare written statement by contacting our counsel. Further that on 16.03.2023 , the petitioner came on my two wheeler to attend case proceeding by appearing before this court, petitioner riding his two wheeler unfortunately skit the vehicle, As the result of the minor accident, the Petitioner sustained simple injuries all over the body. Hence, he could not appear before court on 16.03.2023. Non filling of written statement within the time is neither willful nor wanton it happens only due to the above said bonafide reason of heavy work pressure in my work place and said accident. After, recovery when he contacted his Advocate in person, he has informed that he was set exparte and the petition has been posted to 13.04.2023. He has good case to win.

3. The Crux of Counter is as follows:

The averments stated in petition are not maintainable either in law or on facts and liable to be dismissed. The averments stated in the petition that petitioner was ill is false and he was strong enough. After service of summon, defendants side vakalath filed, inspite of sufficient opportunity granted defendants side counter not filed and defendants set exparte on 16.03.2023. Thereafter, the case was posted for trial and after the Respondent filed Proof Affidavit, the case was posted for Exparte evidence. After waiting for long time, the defendant in order to drag on the proceeding has filed this vexatious petition. Hence the petition is liable to be dismissed with cost.

4. Heard both. Perused Records. Neither Petitioner nor Respondent have examined any witnesses and marked exhibits.

5. Point for Consideration:-

i).Whether the petition is allowed or not?

6. On Point:-

The Petitioner/Defendant has filed this petition under Order 9 Rule 7 CPC to pass setting aside the ex-parte order dated 16.03.2023 passed against Petitioner and permit him to contest the case by taking his written statement on record. According to Petitioner, the petitioner is Defendant in the suit. The Respondent/Plaintiff has filed original suit for Recovery of money. The Petitioner working at present as an Assistant Engineer at Ulundurpet Block devolvment Office, whereas due to the heavy workload during the past two months, he could not able to give proper instruction to prepare written statement by contacting our counsel. Further that on 16.03.2023, the petitioner came on his two wheeler to attend case proceeding by appearing before this court, petitioner riding his two wheeler unfortunately skit the vehicle, as the result of the minor accident, the Petitioner sustained simple injuries all over the body. Hence, he could not appear before court on 16.03.2023. Non filling of written statement within the time is neither willful nor wanton it happens only due to the above said bonafide reason of heavy work pressure in my work place and said accident. After, recovery when he contacted his Advocate in person, he has informed that he was set exparte and the petition has been posted to 13.04.2023. He has good case to win.

7. The Learned Counsel for petitioner would argue that, due to minor accident and the petitioner sustained simple injuries all over the body and he could not appear before court and has not filed written statement. The petitioner has good case to win, Hence the petition is liable to be allowed.

8. The learned counsel for respondent would submit that in order to drag on proceeding the petitioner has filed this petition. The reason stated by is not acceptable one and the petition is liable to be dismissed.

9. Upon careful consideration, the petitioner failed to the written statement due to his accident and the case is now posted for plaintiff's side exparte evidence. In order to give opportunity to the petitioner it is just and necessary to allow this petition. In order to compensate the inconvenience caused to the respondent it is paid to allow this petition on condition to pay certain amount to the respondent.

For the reasons stated supra this court comes to the conclusion that the petition is entirely to get the relief and decided the point accordingly.

In the result, this petition is allowed on payment of Cost of Rs.1,000/- to the Respondent on or before 24.11.2023, Call on 24.11.2023.

Dictated to the Steno-typist, typed on computer, corrected, print out was taken and pronounced by me in the open court, on this 2nd day of November 2023.

A. Tamilselvan
II Additional Subordinate Judge(FAC),
Villupuram.

Petitioner's side Witness and Exhibits: - NIL.

Respondent's side Witness and Exhibits: - NIL.

A. Tamilselvan
II Additional Subordinate Judge(FAC),
Villupuram.