

KABC010254242024



**IN THE COURT OF XV ADDITIONAL CITY CIVIL &
SESSIONS JUDGE AT BENGALURU (CCH.NO.3)**

Dated this 27th day of March 2026

OS No.6999/2024

Present :

Sri. SOMASHEKARA.A., B.A.L., LL.M,
XV Additional City Civil & Sessions
Judge, Bengaluru.

Plaintiff Sri.Chandrashekar

V/s

Defendant Sam S

ORDER ON I.A. No.I

This Interlocutory Application is filed by the defendant under Order IX Rule 7 read with Section 151 of the Code of Civil Procedure seeking to set aside the ex parte order dated 08.07.2025 and to permit him to file vakalath and contest the case on merits.

Judge sign

2. The averments made in the affidavit filed in support of the application disclose that the defendant has contended that the above suit is filed by the plaintiff against him and the matter was posted on 08.07.2025 for filing vakalath on behalf of the defendant. It is stated that on the said date, the defendant could not contact his counsel as he was suffering from viral fever and was bedridden and therefore could not file vakalath. Due to his absence, this Court was pleased to place him ex parte. It is further contended that the said absence was neither wilful nor intentional, but due to bona fide reasons, and if the application is not allowed, he would be put to irreparable loss and hardship, whereas no prejudice would be caused to the plaintiff.

3. Per contra, the plaintiff has filed detailed written arguments opposing the application. It is contended that the suit is one for eviction, recovery of arrears of rent and other consequential reliefs. It is further contended that the defendant was inducted as a tenant under a registered lease deed dated 01.12.2021 on a monthly rent of Rs.60,000/-, which was subsequently enhanced to Rs.66,150/-. It is the specific case of the plaintiff that despite termination of tenancy by legal notice

Judge sign

dated 05.08.2024, the defendant has continued in unauthorized occupation without payment of rent and has accumulated arrears of Rs.11,78,823/- as on September 2024.

4. It is further contended that though the defendant was placed ex parte on 08.07.2025 and later appeared on 30.10.2025, he has neither filed written statement nor objections, and objections were taken as "Nil" on 19.01.2026. It is argued that absence of denial amounts to admission and the defendant is liable to pay use and occupation charges. It is also contended that the plaintiff is a senior citizen aged about 83 years, solely dependent on rental income and is facing severe hardship due to non-payment of rent and mounting maintenance liabilities of Rs.5,30,157/-. Hence, the plaintiff has also sought direction to the defendant to deposit use and occupation charges during pendency of the suit.

5. Heard the arguments on both sides and perused the material available on record. The point that arises for consideration.

Judge sign

1) Whether the defendant has made out sufficient cause to set aside the ex parte order dated 08.07.2025 under Order IX Rule 7 CPC?

2) What order?

6. My answer to the above points are as under;

Point No.1: in the Affirmative.

Point No.2: as per the final order for the following;

REASONS

7. **Point No.1:** On careful consideration of the rival contentions, it is to be noted that the provision under Order IX Rule 7 CPC enables the Court to permit a defendant, who was placed ex parte, to participate in the proceedings on showing sufficient cause for his earlier non-appearance. The approach of the Court while considering such applications has to be liberal so as to afford an opportunity to the parties to contest the matter on merits, unless mala fides or deliberate negligence is established.

8. In the present case, the reason assigned by the defendant for his absence on 08.07.2025 is that he was suffering from viral fever and was bedridden, and therefore could not contact his counsel and file vakalath. Though no medical

Judge sign

documents are produced, the explanation offered appears to be a plausible and bona fide one. There is no material placed by the plaintiff to demonstrate that the defendant's absence was wilful or deliberate.

9. It is a settled principle of law that procedural laws are handmaids of justice and not meant to defeat substantive rights. Denial of an opportunity to contest the matter would result in serious prejudice to the defendant. On the other hand, if the defendant is permitted to come on record, the plaintiff can be compensated by way of costs and by imposing appropriate conditions.

10. At the same time, the conduct of the defendant cannot be completely ignored. Even after entering appearance on 30.10.2025, the defendant has not filed written statement nor objections to the application and has allowed the matter to proceed without diligence. Further, the material placed by the plaintiff prima facie indicates that the defendant continues in occupation of the premises even after termination of tenancy and without payment of rent.

Judge sign

11. It is a well-settled principle that a person in occupation of premises cannot be permitted to enjoy the property without payment of use and occupation charges during pendency of the proceedings. Equity demands that the defendant should not unjustly enrich himself at the cost of the plaintiff, especially when the plaintiff is stated to be a senior citizen dependent on rental income. Therefore, this Court is of the considered opinion that while the defendant deserves an opportunity to contest the matter on merits, such opportunity must be balanced by imposing conditions to safeguard the interest of the plaintiff. ***Accordingly, the point for consideration is answered partly in the affirmative.***

12. **Point No.2:** For the foregoing reasons, I proceed to pass the following;

ORDER

I.A. No.I filed by the defendant under Order IX Rule 7 r/w Section 151 CPC is hereby allowed in part, subject to the following conditions.

The ex parte order dated 08.07.2025 is hereby set aside.

Judge sign

The defendant is permitted to file vakalath and contest the case on merits.

The defendant shall file his written statement within 30 days from the date of this order, failing which no further opportunity shall be granted.

The defendant shall deposit a sum of Rs.66,150/- per month (being the last admitted rent) towards use and occupation charges from the date of termination of tenancy i.e., 05.08.2024, within six weeks from the date of this order.

The defendant shall continue to deposit monthly use and occupation charges at the same rate on or before the 5th day of every succeeding month during pendency of the suit.

In case of default in complying with the above conditions, this order shall stand automatically vacated.

No order as to costs.

(Dictated to the Stenographer, typed by her directly on computer, corrected, signed and then pronounced by me in the open court on this the 27th day of March 2026.)

(Somashekara.A)
XV Addl.City Civil & Sessions
Judge, Bengaluru.

Judge sign

(Order passed and pronounced in open Court vide separate order).

ORDER

I.A. No.I filed by the defendant under Order IX Rule 7 r/w Section 151 CPC is hereby allowed in part, subject to the following conditions.

The ex-parte order dated 08.07.2025 is hereby set aside.

The defendant is permitted to file vakalath and contest the case on

Judge sign

merits.

The defendant shall file his written statement within 30 days from the date of this order, failing which no further opportunity shall be granted.

The defendant shall deposit a sum of Rs.66,150/- per month (being the last admitted rent) towards use and occupation charges from the date of termination of tenancy i.e., 05.08.2024, within six weeks from the date of this order.

The defendant shall continue to deposit monthly use and occupation charges at the same rate on or before the 5th day of every succeeding month during pendency of the suit.

In case of default in complying with the above conditions, this order shall stand automatically vacated.

For written statement.

Call on 29.04.2026.

XV Addl. City Civil & Sessions
Judge, Bengaluru.

Judge sign