

IN THE COURT OF THE MUNSIF, KAYAMKULAM

Present: Smt. A.Aneesa, Munsiff

Monday 30th June, 2025/9th Ashada,1947

IA.9/2024 in OS.165/2021

(Filed on 27.11.2024)

Petitioner/

Power of Attorney Holder of 1st Plaintiff:

Ushadevi, aged 58 yrs,
Rep.by Power of attorney holder,
Prajeeshkumar, aged 41 yrs,
S/o. Ramankutty,
Kattuvallil Veetil,
Mattom South,
Thattarambalam P.O,
Alappuzha District.

(By Adv. Omar Salim)

Respondents/Defendants:

1. Pushpavally, aged 50 yrs,
W/o. Unni Rajan,
Aravinda Bhavanam,
Pathiyoor West Muri,
Karthikappally Taluk,
Alappuzha District.
2. Gangamol, aged 31 yrs,
D/o. Unni Rajan,
Aravinda Bhavanam,
Pathiyoor West Muri,
Karthikappally Taluk, Alappuzha Dist.

(By Adv. M.M.Warrier)

This petition is coming on for hearing on 30.06.2025 and the court of the same day passed the following.

ORDER

This is an order in a petition filed under Order IX Rule 7 of the Code of Civil Procedure, 1908 to set aside the ex parte order.

2. The gist of averments in the petition is as follows:-
Petitioner is the power of attorney holder of the 1st defendant in the suit. The case was posted to 05.11.2024 for written statement of defendant Nos. 1 and 2. Whereas, due to non filing of written statement, the defendants set ex parte on that day. The 1st defendant is abroad with her children and the petitioner is entrusted to conduct the case through power of attorney. The petitioner is working as Manager at ESAF bank, Kayamkulam and due to busy schedule, he cannot contact the counsel. Therefore, he could not file written statement in time. There is no wilful latches or negligence on the part of the petitioner. The 1st defendant has serious contentions in the case. It is necessary to consider the evidence of the petitioner also for the just disposal of the case. Otherwise, the 1st defendant would cause irreparable injury and hardships. Therefore, the petitioner sought to set aside the ex parte order dated 05.11.2024.

3. The respondent/ plaintiff filed objection contending *inter alia* as follows:- The petition is not maintainable either in law or on facts. The averments in the petition except those which are specifically admitted in the objection are denied. The defendant was set ex parte on 01.09.2021. Again, to prolong the matter, the defendant did not file written statement. The above case was filed in the year 2021. The power of attorney was executed on 23.02.2024. Before that, even though the 1st defendant has sufficient time to file written statement, he did not do so. Again on 05.11.20224 also, the 1st defendant set ex parte. After signing the power of attorney, even though the petitioner got nine years for filing the written statement, he did not file the written statement with an intention to harass the respondent. It is not believable that as the petitioner is working as Manager at ESAF bank, Kayamkulam and due to busy schedule, he cannot contact the counsel. From 03.11.2021 onwards, the case was posted for evidence. On all posting dates, the 1st defendant appeared and sought adjournments. The 1st defendant is purposefully evaded from filing of written statement. After the visit of the commissioner, the defendants forcefully constructed fencing by encroaching the plaint schedule property. For removing the fencing, the plaintiff filed

injunction petition and on all the postings of the said injunction, the defendant unnecessarily sought time with an intention to prolong the matter and also to justify the illegal activities of the defendants. On all these grounds, the respondent sought to dismiss the petition.

4. The following points are formulated for consideration:-

1. Whether the petitioner is entitled to get an order to set aside the ex parte order dated 05.11.2024 ?

2. Reliefs and costs ?

5. Heard both sides.

6. **Point No.1** :- The case put forward by the petitioner is that he could not appear before the court, when the case posted on 05.11.2024. The reason stated by the petitioner is that, the 1st defendant is abroad with her children and the petitioner is entrusted to conduct the case through power of attorney. The petitioner is working as Manager at ESAF bank, Kayamkulam and due to busy schedule, he cannot contact the counsel. Therefore, he could not file written statement in time. The reason projected by the petitioner, though there is no evidence adduced by the petitioner, can be considered as sufficient to set aside the ex parte order. Thus, I am of

the view that the petition has to be allowed. Therefore, point No. 1 is found in favour of the petitioner.

7. **Point No. 2**:- In view of my discussions and findings on point No. 1, the petition is liable to be allowed.

In the result, the petition filed by the petitioner to set aside the ex parte order dated 05.11.2024 is allowed. No order as to costs.

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 30th day of June, 2025.)

Sd/-
ANEESA. A
MUNSIFF

APPENDIX:
NIL.

Sd/-
MUNSIFF

// True Copy //

MUNSIFF

Typed by: Shafeek

Compd by: