

**IN THE COURT OF THE MUNSIFF, KAYAMKULAM**

Present: Smt. Aneesa.A, Munsiff

Tuesday the 19<sup>th</sup> day of August, 2025/28th Sravana, 1947

**IA.4/2025 in OS.236/2022**

(Filed on 18.06.2025)

**Petitioner/Defendant:** Bhasuran, aged 64 yrs,  
S/o. Bhaskaran,  
Malayil Vadakkathil,  
Pathiyoor Village,  
Keerikkad, Alappuzha.

**(By Adv.Vidhu M.Unnithan)**

**Respondent/Plaintiff:** Pavithran, aged 62 yrs,  
S/o. Bhaskaran,  
Pavithram Veetil  
(Malayil Vadakkathil),  
Pathiyoor muri,  
Pathiyoor Village,  
Karthikappally Taluk,  
Alappuzha District.

**(Adv.K.Sreekumar)**

This petition is coming on for final hearing on 19.08.2025 and the court of the same day passed the following.

**ORDER**

This is a petition filed by the defendant 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 defendant in the suit. The suit is filed for partition and permanent prohibitory injunction. This case was included in the special list and posted for hearing on 08.04.2025. The defendant was set ex-parte in the suit on 08.04.2025 on the ground of his non appearance before the court. Thereafter the court had examined the plaintiff and documents had been marked as Exts.A1 to A4. Again on 10.04.2025, a document has been marked as Ext.A5 through PW1. Since the mobile phone of defendant was damaged and its display was destroyed, he could not contact his counsel or enquire about the case matters. The defendant has already filed his written statement on 19.10.2023 before the court. There is no willful laches or negligence from the part of petitioner. The petitioner has serious contentions in the suit and the suit has to be disposed on merit after considering the evidence of the petitioner also. Otherwise, the petitioner will be put to irreparable injury and hardships. Thus, the petition.

**3. The respondent/ plaintiff filed objection contending *inter alia* as follows:-**The petition is not maintainable either in law or on facts. There is no sufficient reasons stated in the petition to set

aside the ex parte order. The defendant is already aware that the case the case was scheduled for trial on 08.04.2025. Any statements to the contrary are false and fabricated. The defendant or his advocate have deliberately failed to appear before the court. It is false to say that the mobile phone of the defendant got damaged and hence he could not contact his advocate. Now all the details of the case are available in e-Court and his advocate is aware about it. Even after the ex parte, the case was still being tried for evidence. The defendant and his advocate are aware about it. The intention of the defendant is to harass the plaintiff. Therefore, the respondent sought to dismiss the petition with costs.

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 08.04.2025 ?

2. Reliefs and costs ?

5. Heard both sides.

6. **Point No.1**:- The petitioner herein approached this court to set aside the ex parte order dated 08.04.2025. It can be seen from the records that due to non appearance before the court, the defendant was set ex parte on 08.04.2025. In the affidavit, it is stated that since

the mobile phone of defendant was damaged and its display was destroyed, he could not contact his counsel or enquire about the case matters. On the other hand. the learned counsel for the respondent contended that now all the details of the case are available in e-Court and his advocate is aware about it. But for the reasons sated in the petition, this Court is satisfied that the defendant has made out sufficient cause, to allow the petition. 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 08.04.2025 is allowed.

*(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 19<sup>th</sup> day of August, 2025)*

Sd/-  
ANEESA.A,  
MUNSIFF

APPENDIX - Nil.

Sd/-  
MUNSIFF

// True copy //

MUNSIFF

