

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Thursday the 11th day of December, 2025/ 20th Agrahayana, 1947

I A No. 11/2025 in O.S. No. 14/2023

Petitioner/Defendant:-

Santhosh Lal, aged 62 years, S/o.Ramakrishnan, Chaliath House,
Palluruthy PO, Pin-682006

By Advs. Sreelykumar K S & Sandeep V G

Respondent/Plaintiff:-

Suraj John T, aged 52 years, S/o.Late.T M John,
Thykoottathil, Kattaparambu, Kattiparambu Church,
Kannamaly PO, Kochi-682008.

By Advs. Benedicta Vembly, Annmary Silvester,
Feba Mary Thomas, Baby K K & Gopika H H

This petition is come up for hearing before me on 08.12.2025 and the
court on 11.12.2025 passed the following:-

ORDER

This is an application filed under Order IX Rule 7 and S.151 of the
Code of Civil Procedure 1908 by the petitioner for setting aside the exparte
order dated 01/12/2023.

2. The averments in the petition in brief are as follows:-

Petitioner is the defendant in the suit. The above suit is filed by the
plaintiff for fixation of boundaries and prohibitory injunction. The suit

was posted for filing written statement by the defendant on 01.12.2023. But since the petitioner was out of station in connection with some business purpose, his father in law Mr.Viswanathan was looking after the case. Due to his age related ailments he could not contact the counsel and pass on the information to him. Hence the petitioner could not contact his counsel for giving instructions for filing written statement. He could not come to about the said fact only when he sent his son to enquire about the case on 16.09.2025. Immediately he contacted his counsel and gave instructions to conduct the case. There is no willful negligence or laches on his part in the above matter. The petitioner has strong contentions in the above suit. Hence it is highly necessary to set aside the exparte order passed against him on 01.12.2023 and allow him to file a written statement and decide the case on merits.

3. Respondent filed objection vehemently disputing the averments in the petition. On 06.06.2023 this court had directed the petitioner to file the written statement and objection to the commission report in IA.2/2023 and the case was posted to 11.07.2023. But the petitioner had failed to file the written statement within 30 days and the case was again posted to 16.08.2023 as last chance. On 16.08.2023 the petitioner was again given another chance by this court to file the written statement and the case was posted to 17.10.2023. On 17.10.2023 the counsel for the

petitioner had submitted that written statement is filed on that day. But the written statement was not seen filed on 01.12.2023, then only this court had set the defendant *ex parte*. As per Order VIII Rule 10, if any person who is required to file a written statement does not do so within the time period prescribed or permitted by the court, the court shall pronounce the judgment against him or issue an order, and a decree shall be drawn up on the pronouncement of the judgment. The petitioner had ample opportunity and enough time span of 1 year and 10 months to file set aside *ex parte* order petition. The petitioner claims to be out of station and the case was being conducted by father-in-law. The petitioner had neither made any efforts to contact the counsel or the father-in-law to enquire about the case filed against him for 1 year 10 months. It reveals that no efforts were taken from the part of the petitioner to conduct the case nor any petitions were filed so far. It is only when the survey commission is taken and the report is filed, the petitioner submits the petition to set aside the *ex parte* petition without a delay condonation petition. The setting aside the *ex parte* order at this stage will cause prejudice to the plaintiff/respondent who contested the matter legally over these years. Thus allowing the petition to set aside the *ex parte* order at this stage after a period of 1 year and 10 months and the filing of survey commission report will cause irreparable injury, loss and

hardship. Hence the petition may be dismissed.

4. The points arise for consideration:-

- (i) Whether the petition to set aside the exparte decree can be allowed?
- (ii) Reliefs and costs?

5. Heard both sides. Perused petition, objection and case records.

6. **Point No.(i):-**The specific case of the petitioner is that the case was posted for filing a written statement by the defendant on 01.12.2023. On that day, since no written statement was found filed and there was no representation on behalf of the defendant, this Court set the defendant exparte. The petitioner/defendant contended that he was out of station in connection with business purposes and the case was being looked after by his father-in-law, Sri. Viswanathan. It is stated that due to age-related ailments, the said person could not properly coordinate with the counsel and convey the necessary instructions. According to the petitioner, he came to know about the exparte proceedings only on 16.09.2025, when he sent his son to enquire about the case. Immediately thereafter, he contacted his counsel and filed the present petition. On the other hand the respondent contended that on 06.06.2023 this court had directed the petitioner to file the written statement and objection to the commission report in IA.2/2023 and the case was posted to 11.07.2023. Since the written statement was not filed, the case was again posted to

16.08.2023 granting further opportunity. Even thereafter, on 16.08.2023, this Court granted another chance and posted the case to 17.10.2023. On 17.10.2023, the learned counsel for the defendant submitted that written statement was filed. However, when the matter was taken up on 01.12.2023, no written statement was seen on record, which led to the defendant being set *exparte*. The respondent further contends that the petitioner had sufficient opportunity and a long period of about 1 year and 10 months to take steps to set aside the *exparte* order, but no such steps were taken.

7. This Court has considered the rival submissions and perused the records. It is evident from the proceedings sheet that the defendant was granted more than one opportunity to file written statement. Despite such indulgence shown by this Court, the written statement was not properly filed and placed on record. It is also clear that the *exparte* order was passed on 01.12.2023 and the present petition is filed after a considerable delay of nearly 1 year and 10 months. In the present case, though there is clear delay and lack of diligence on the part of the defendant, it cannot be said that the explanation offered is wholly unbelievable or that the petition is filed with an ulterior motive to protract the proceedings. The suit is one relating to fixation of boundary and injunction, involving immovable property rights, and denial of an opportunity to contest may

result in serious civil consequences to the defendant. In such circumstances, this court is of the view that no irreparable prejudice will be caused to the plaintiff if the exparte order is set aside, as the plaintiff will have full opportunity to meet the defence on merits. On the other hand, refusal to set aside the exparte order may result in denial of a fair opportunity to the defendant and lead to multiplicity of proceedings. Accordingly, point No.1 is found in favour of the petitioner.

8. Point No.(ii):- In the light of the above findings, this court of the view that petition can be allowed.

In the result, the petition is allowed without costs.

(Dictated to the Confdl.Asst; transcribed and typed by her, corrected and pronounced by me in open Court on this the 11th day of December 2025.)

Sd/-

Simi P Siju
Additional Munsiff

APPENDIX : NIL

Id/-

Additional Munsiff

//True Copy//

Additional Munsiff

O R D E R

I.A. No.11/2025

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Dated : 11.12.2025