

**IN THE COURT OF THE MUNSIF KOLENCHERY**

Present:- **Smt.Sirsha N.A, Munsiff.**

Saturday, the 25<sup>th</sup> day of January, 2025 / 5<sup>th</sup> Magha, 1946

**I.A No. 7/2024 in OS No. 38 / 2021**

**Petitioner / Defendant :-**

Anie Ittan W/o Ittan, aged 78 years, Thekkethottiyil House, Poothrikka Kara, Aikaranadu South Village, Kunnathunadu Taluk, Ernakulam District.

**By Advs. C.R.Vinod Kumar, Jacob K Abraham, P.C.Rajan, Sajo Zacharia Andrews, Anil Kumar C.R, Silpa Gopalan, & Renjith Rajan**

**Respondent / Plaintiff:-**

Kurian S/o Joseph, Elavanal House, Poothrikka Kara, Aikaranadu South Village, Kunnathunadu Taluk, Ernakulam District.

**By Advs. G.Suresh and Akhil Alphonse G**

This petition came up for hearing before me on 19/12/2024 in the presence of the above said counsels and the Court on 25/01/2025 passed the following :-

**ORDER**

1. This is a petition seeking to set aside the exparte order passed against the petitioner, who is the defendant in the suit.

2. The brief averments of the petition are as follows: The petitioner/defendant has filed the present petition to set aside the exparte order passed in the suit, which is one for a permanent prohibitory injunction and consequential reliefs. The matter was last posted for filing the written statement on 25.01.2024, as a final opportunity. However, on that date, due to the absence of the petitioner/defendant, she was set exparte on 25.01.2024, and the suit was posted for exparte evidence. The petitioner/defendant contends that her counsel had duly informed her of the hearing date and had asked her to be present at his office for filing the written statement. Unfortunately, the petitioner/defendant was suffering from fever and acute back pain, due to which she failed to contact her counsel. In the interim, she was set exparte. The petitioner submits that her non-appearance and failure to file the written statement were neither wilful nor deliberate, but due to the circumstances stated above. She asserts her readiness and willingness to contest the case and to produce cogent evidence in support of her defence. She further avers that she has substantial contentions and evidence to present and seeks an opportunity to contest the matter on merits. She contends that setting aside the exparte order would not prejudice the respondent in any

manner, whereas the petitioner would suffer irreparable hardship and injustice if not granted the opportunity to be heard. Hence, this petition.

3. Counter Affidavit of the Respondent / Plaintiff : The respondent / plaintiff has filed a counter affidavit opposing the petition, contending that the petition is not maintainable either in law or on facts. It is stated that the suit was filed in 2021, and no written statement has been filed by the defendant to date. The case was posted for filing the written statement as a last chance on 25.01.2024, and upon failure of the defendant to comply, she was set *exparte*. The plaintiff was examined on 14.03.2024, and Exhibits A1, A2 and the Commission Report C1 and C1(a) were marked. The matter was subsequently posted for final hearing on 30.03.2024, and later adjourned to 18.05.2024, 27.05.2024 and 04.06.2024. The reasons cited by the defendant for her non-appearance are denied as untrue. It is contended that the defendant failed to file a written statement as she has no valid defence to raise. It is further submitted that the plaintiff is suffering from health issues and finds it difficult to travel, and that the petition has been filed by the defendant solely to harass the plaintiff and to delay the proceedings. Accordingly, it is prayed that the petition be dismissed with costs.

4. No evidence has been adduced by the petitioner in support of the petition.

5. Heard the learned counsel for both parties.
6. The points that arise for consideration in this petition are:
  - (I) Whether the petitioner has shown sufficient cause to set aside the ex parte order dated 25.01.2024?
  - (ii) What order is to be passed with respect to terms and costs?

7. **Point No. (i):** The suit is one for permanent prohibitory injunction.

The petitioner has submitted that the delay in appearance and filing of the written statement was due to her ill health and inability to contact her counsel. It is well-settled that under Order IX Rule 7 of the CPC, the term “sufficient cause” must be construed liberally. In *Subramania Iyer v. Valsala*, 2000 (1) KLT 751, the Hon’ble Kerala High Court observed “A liberal approach is necessary and Courts have wide discretion in deciding the question of 'sufficient cause'. The broad principles of natural justice demand that a litigant should not be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part. The Court must bear in mind that the right of a party to be heard should be denied only in cases of gross negligence or misconduct. If the party has taken some steps and filed the application diligently, supported by evidence showing sufficient cause, the application must be allowed, subject to costs.”

8. In light of the above dictum, and upon perusal of the affidavit filed in support of this petition, this Court is of the view that the petitioner has shown sufficient cause for her absence on 25.01.2024 and the petitioner must get an opportunity to contest the case on merits. Accordingly, this point is answered in favour of the petitioner.

9. **Point No. (ii)** : Considering the nature of the suit and the petition, there is no order as to costs . This point is answered accordingly.

10. In the result, the petition is allowed .

(Dictated to the Confdl.Asst, typed by her, corrected and pronounced by me in open court, this the 25<sup>th</sup> day of January, 2025).

Sd/-  
**Sirsha N A**  
**Munsiff**

**Appendix:- Nil.**

Id/-  
**Munsiff**

**// True Copy //**

**Munsiff**

Typed by : SAA  
Comp.by : APM

**Order**  
**IA No.7/2024**  
**in**  
**O.S. No. 38 of 2021**

**Dated: 25.01.2025**