

IN THE COURT OF THE MUNSIFF, TIRUR
PRESENT: Sri. SANU C., MUNSIFF.
Tuesday, the 28th day of January, 2025
the 8th day of Magha, 1946

INTERLOCUTORY APPLICATION No.4 OF 2023 IN
ORIGINAL SUIT No.79 OF 2022

Between:

1. Subaida, 60 years,
W/o. Moidheenkutty,
1st petitioner's Children:
 2. Ramla, 44 years,
 3. Naseera, 40 years,
 4. Laila, 35 years,
(Petitioners are residing at Kariyangattukkavil
House, Thriprangode amsom, Kaimalaserry desom,
Tirur Taluk, Malappuram District.)
- } Petitioners
Defendants

And

1. Muhammed, 57 years,
S/o. Kariyangattukkavil Kallikkattu Ali @ Kuhnava,
 2. Ramla, 47 years, W/o. Muhammed.
(Respondents are residing at Thriprangode amsom,
Kaimalaserry desom, Tirur Taluk,
Malappuram District).
- } Respondents
Plaintiffs

This petition coming this day for hearing before me in the presence of Sri. M.P Hussain, Advocate for the petitioners and of Sri. C. Nandakumar and of Smt. Soumya Kuliparambil, Advocates for the respondents, the Court passed the following;

ORDER

The petition is filed under Order 9 Rule 7 of Civil Procedure Code to set aside the exparte order passed against the defendant Nos.1 to 4 dated 08.11.2023.

2. **Petition averments in brief are as follows:-**The petitioners are defendants in the suit. The suit was posted to 08.11.2023 for filing of written

statement of defendants. It is contended that the petitioners were not able to appear in the court on that day and to submit a written statement as first petitioner was in bedridden due to fever, and 2nd and 3rd petitioners are not at the place and 3rd petitioner had gone to work. Subsequently, it was recorded that 'no written statement was filed' and ex parte decree was passed against the above defendants. There was no willful laches on their part. So, petitioners requested to set aside the ex parte order. Hence the application.

3. Respondent No.1 opposed the application and filed counter stating that the petition is not maintainable and there is no bonafide for the petition. Respondent contended that there is no substance in the petition and it is completely false that the petitioners were unable to appear before the court on the day, due to the fever of first petitioner and 2nd and 3rd petitioners are not at the place. No proper documents has been produced to substantiate said contention. The application is filed only to protract the matter. Hence, prays for dismissal of petition with costs.

4. Heard. Perused the records and affidavit.

5. The point arise for determination:-

I. Whether the petitioners are entitled to get a relief, as prayed for?

6. **Point No.1:-** On going through the petition, it is contended that the petitioners were not able to appear in the court on that day and to submit a written statement as first petitioner was in bedridden due to fever, and the other petitioners were out of station at that time. It was neither intentional nor deliberate and there

was no willful laches on their part. Hence explanation given by the petitioner is proper and satisfied thereby. Therefore, this Court is inclined to allow the application on terms.

In the result,

The petition is allowed and the exparte order passed against the defendant Nos.1 to 4 dated 08.11.2023 is set aside on payment of cost of ₹ 1,000/- (Rupees One Thousand only) on or before 12.02.2025 to the respondents.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, this the 28th day of January, 2025).

MUNSIFF

Typed by: Sreedevi.N.K
Compared by: 1) 2

Fair Order in IA.4/2023
in OS. 79//2022 Dated.28-01-2025
