

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : Tmt.M.Santhosham., B.Sc., B.L.,

District Munsif, Sulur

Thiruvalluvar year 2056 Visvavasu year, 23rd day of Thai

Friday the 6th day of February 2026

I.A.No.8/2025

in

O.S.No. 48/2019

A. Selvaraj

... Petitioner/ 1st Defendant

/VS/

1. M. Kalimuthu

2. Perumalsamy

3. M. Krishnasamy

4. B. Balamani

5. B. Gopalkrishnan

... Respondents/Plaintiffs

6. A. Thangavel

... Respondent / 2nd Defendant

This petition is coming on this day for final hearing before me in the presence of Mr. R.V.Gurunathan, Mahesan, Advocate for the Petitioner and Mr.K.Srikumar, Advocate for the 1st to 5th Respondents and 6th Respondent/ 2nd Defendant was exparte in main suit and upon perusing the records, and this court made the following:

ORDER

This petition filed by the petitioner under Order 9 Rule 7 and section 151 of CPC to set aside the exparte order dated 21.09.2024 passed against the petitioner (the 1st defendant in the above suit) and permit him to defend the suit proceedings

according to law.

1. The brief averments of the affidavit filed by the petitioner as follows:

1.1. The petitioner is the 1st defendant in the main suit. The 1st to 5th respondents have filed the above Suit against petitioner/ 1st defendant and 6th respondent/ 2nd defendant for the relief of "Declaration and Permanent injunction" and for other reliefs. The petitioner/ 1st defendant have changed his counsel and engaged his new counsel Mr.R.V.Gurunathan to defend the case proceedings on petitioner/ 1st defendant behalf. On 18.08.2025 petitioner/ 1st defendant have filed change of Vakalath and the case was posted on 21.08.2025 for steps for cross examination of PW-1. On the same day i.e., 21.08.2025 petitioner/ 1st defendant have filed a petition under Section 151 of Civil Procedure Code to re-open the case on his side to file Additional Written Statement and the same was numbered as I.A.No.7/2025 and it was allowed on 05.11.2025.

1.2. Petitioner/ 1st defendant getting ready for Cross examination of PW.1 through his present counsel on that time only petitioner/ 1st defendant came to know that he was set Exparte on 21.09.2024 for non examination of PW-1. Since petitioner/ 1st defendant fell ill and suffered a lot and not able to follow the case affairs continuously, taken rest for a prolonged period, he could not turn up to his Counsel Office. In the mean time, the above matter was called and due to petitioner/ 1st defendant non-appearance he was set exparte on 21.09.2024 and the Suit is posted for further Witnesses on the side of the plaintiffs and the case adjourned to 25.09.2024. The petitioner/ 1st defendant have received a notice from this Court for hearing date on 08.01.2025 and in earlier petitioner/ 1st defendant have engaged Advocate M.Tamilselvi and this Court adjourned the case for petitioner/ 1st defendant counter statement in I.A.No.6/2025. In the next hearing petitioner/ 1st defendant counsel has endorsed to allow the above said I.A.No.6/2025. Only two days before

this fact has known to petitioner/ 1st defendant and he filing this affidavit along with petition to set aside the ex parte order passed against petitioner/ 1st defendant on 21.09.2024. Petitioner/ 1st defendant's non-appearance on 21.09.2024 was neither willful nor wanton, only because of the bonafide reasons assigned in the foregoing paragraph. Petitioner/ 1st defendant having a valid defense and petitioner/ 1st defendant having a fair chance of success in the above matter. Hence, the petition is to be allowed.

2. The brief averments of Counter statement filed by the 1st to 5th Respondents/ Plaintiffs as follows:

2.1. The petition is false, frivolous, vexatious and not sustainable in law and on facts of the case. This Respondents denies all the averments made in the petitioner's affidavit and the petitioner has to prove of the same. This petitioner/ 1st defendant filed a suit OS. No.1178/2018 before the 1st Additional Sub-ordinate Judge of Coimbatore and the above suit was dismissed on 05.09.2023 for default for not conducting the trail. The above suit was reopened on 19.02.2024, where as this plaintiffs' advocate endorsed no objection in the above mentioned reopen petition and the same was allowed. Again the above suit OS.No.1178/2018 was dismissed for not taking trail on 26.02.2024.

2.2. In this present suit also this petitioner/ 1st defendant set ex-parte on 15.06.2022 and set-aside application has been filed by this petitioner/ 1st defendant. In which this respondents/plaintiffs counsel endorsed no objection to allow the application. These plaintiffs are always ready for fare trail and commencement of the suit. But this petitioner did not come up with fair reason for his non appearance in this present suit for such long period. Where as his previous counsel mentioned in this court on 05.12.2023 that "the bundle was handed over to defendants". Thus, they were again set ex-parte on 05.12.2023. As stated in Para No. 4 in the affidavit, no

proof is provided by this petitioner to support their claim that the petitioner fallen ill, there is no valid reason for re-opening as compelling. This application has been filed by this petitioner with malafide intention to delay the proceedings and this application is an attempt to fill the gap rather than addressing ambiguities. Hence, the petition ought to be dismissed.

3. No Witnesses were examined on either side, and no documents were marked as exhibits.

4. Points for Consideration:-

Whether the petition under Order 9 Rule 7 and section 151 of CPC to set aside the exparte order dated 21.09.2024 is to be allowed?

5. Points:-

5.1. The petition affidavit, counter and the enquiry of both parties were carefully considered. Heard the counsels for both the parties. The suit documents were carefully examined. The main suit is filed for permanent injunction by the 1st to 5th Respondents/Plaintiffs. The original suit is pending for appearance of defendants for cross of PW.1 at this stage the defendant being called absent set exparte.

5.2. The petitioner stated that, the Petitioner/ 1st defendant getting ready for Cross examination of PW.1 through his present counsel on that time only petitioner/ 1st defendant came to know that he was set Exparte on 21.09.2024 for non examination of PW-1. Since petitioner/ 1st defendant fell ill and suffered a lot and not able to follow the case affairs continuously, taken rest for a prolonged period, he could not turn up to his Counsel Office. In the mean time, the above matter was called and due to petitioner/ 1st defendant non-appearance he was set exparte on 21.09.2024 and the Suit is posted for further Witnesses on the side of the plaintiffs

and the case adjourned to 25.09.2024.

5.3. The 1st to 5th Respondents stated that, this petitioner/ 1st defendant set ex-parte on 15.06.2022 and set-aside application has been filed by this petitioner/ 1st defendant. In which this respondents/plaintiffs counsel endorsed no objection to allow the application. These plaintiffs are always ready for fare trail and commencement of the suit. But this petitioner did not come up with fair reason for his non appearance in this present suit for such long period. This application has been filed by this petitioner with malafide intention to delay the proceedings.

5.4. On perusal of record, on 15.06.2022 the defendants are not filed their written statement and called absent set exparte. On 8.02.2022 the 1st and 2nd defendants filed petition u/O 9 R 7 of CPC along with written statement to set aside the exparte order and the same was numbered and in I.A.No.3/2022 and allowed on 25.08.2022. After issues framed trial has been commenced. On 05.12.2023 defendants counsel present and reported that, he handed over bundle to the defendants. On the same day the defendants also being called absent set exparte at the time the suit is in the stage of further plaintiffs side evidence. On 11.03.2024 defendant filed petition u/O 9 R 7 of CPC to set aside the exparte order passed on 05.12.2023 and the same petition was numbered as I.A.No.5/2024 and allowed on 12.04.2024. Again on 21.09.204 PW.1 cross the defendant being called absent set exparte. Now come forward with this petition to set aside the exparte order passed on 21.09.2024.

5.5. It is noted that, the defendants are again and again absent set exparte. The plaintiffs are also prejudice for the act of the defendants. The delay should be definitely cause hardship to the 1st to 5th respondents/ plaintiffs. Hence, the delay to be compensated by way of cost.

In the result, this petition is to be allowed on payment of cost of Rs.2000/- paid to the 1st to 5th respondents/plaintiffs on or before 13.02.2026. On failure this petition stands dismissed automatically. For compliance Call on 13.02.2026.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 6th day of February 2026.

Sd/M.Santhosham
District Munsif,
Sulur.

List of witnesses and documents on petitioners side:- - Nil

List of witnesses and documents on Respondent side:- - Nil

Sd/M.Santhosham
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.8/2025 in
O.S.No.48/2019
Dated: 06.02.2026
DMC, Sulur