

**IN THE COURT OF JUDGE, COMMERCIAL COURT (SENIOR CIVIL JUDGE
CADRE), COIMBATORE**

PRESENT: THIRU.C.B.VEDAGIRI, B.PHARM, MS-IT (AUS)., L.L.M., Judge
Commercial Court, (Senior Civil Judge Cadre)
Coimbatore.

Dated this the 21st Day of April 2026, Tuesday.

IA. No. 2 of 2025

in

C.OS No.960 of 2024

(CNR.No.TNCB23-002339-2024)

R.Shridharan

... Petitioner/2nd Defendant

//Vs//

M/s.Canara Bank,
Erstwhile Syndicate Bank,
Tatabad Branch,
Rep by its Branch Manager,
Coimbatore.

... Respondent/Plaintiff

This Petition coming on this day for final hearing before me in the presence of Thiru. C.Gunasekaran, Advocate for the Petitioner/Defendant and Thiru. D.Senthilkumar, Advocate for the Respondent/Plaintiff. Upon hearing the counsels and on perusal of records, having stood over till this day for consideration, this Court passed the following:-

ORDER

The Petition has been filed by the Petitioner/ 2nd Defendant under Order IX Rule 7 and Section 151 of CPC may be pleased to pass an order setting aside the exparte order passed against the petitioner on 15.04.2025 and pass suitable orders.

1. The sum and substance of the Petition:

The Petitioner/2nd Defendant is the petitioner herein and the 2nd defendant in the above suit. The respondents herein have filed the above suit against the petitioner and for recovery of money and for other relief. In the above case the petitioner received notice from the court calling upon him to appear before this Honourable court on 07.03.2025. On that day the petitioner went to attend a condolence of the close relative at Otthakkalmandabam. The petitioner was unable to appear before this Honourable court on 07.03.2025. The case was adjourned for his appearance on 15.04.2025. The Petitioner was suffering from viral fever and was unable to appear before this Honourable court on 15.04.2025. He was called absent and set ex-parte for his non-appearance on 15.04.2025. The Petitioner got a valid defense in the above case. He have come forward with this application to set aside the ex-parte order passed against him on 15.04.2025. The Petitioner was not wantonly negligent or careless in appearing before this Honourable court on 15.04.2025. Unless the ex-parte order passed against him on 15.04.2025 is set aside he will be put too much loss and great hardship. It is therefore prayed that this Honourable court may be pleased to pass an order setting aside the exparte order passed against him on 15.04.2025 and pass suitable orders.

2. The crux of the Counter:

The petition is false, frivolous, vexatious and not maintainable both in law and on facts. The respondent emphatically denies each and every one of the allegations and averments contained in the petition as false and untenable and put the respondent to

strict proof of every one of the same excepting those that are specifically admitted herein. The respondent submits that the main plaint may be read as part and parcel of this petition. The averments in para.2 are admitted by this plaintiff. The averments contained in para.3 of the petition is untenable and is categorically denied by this plaintiff. The contentions of the respondent that the Petitioner/1st defendant was unable to attend the court on 07.03.2025 as he had to attend a condolence of his close relative and suffering from viral fever on 15.04.2025 is false, frivolous and fictitious in nature and has clearly failed to produce any documents to substantiate his claims. The true facts averred are that the 1st Defendant is a proprietorship concern and the 2nd Defendant is the proprietor of the 1st Defendant. That being the case, the 2nd defendant has received the summons sent to him and failed to appear on 07.03.2025 and thereby this Hon'ble court was pleased to adjourn the case to 15.04.2025 for the appearance of 2nd Defendant. The 2nd Defendant failed to appear on 15.04.2025 and thereby he was set ex-parte. Subsequently, the plaintiff has already filed batta for 1st defendant and the 1st defendant filed vakalath on 05.08.2025 and the copies were served upon the 1st Defendant on 23.08.2025 to enable him to file Written Statement. This is when the defendant has again filed a vakalath on 28.10.2025 i.e., for Defendants 1 & 2 along with Written Statement and this application (Order 9 Rule 7) to set aside the ex-parte order against the 2nd Defendant. This act of the Defendants is untenable and shall not be entertained by this Hon'ble Court. The averments in para 5 and 6 is to be strictly proved by the petitioner and is denied by this respondent. The petition in itself is not maintainable as the commercial courts act does not include the applicability of Order IX Rule 7 of Civil Procedure code in the commercial suit. There are no merits in the present application and it shall be dismissed with costs.

3. Heard both sides. Perused the record.

4. Point of determination:

The point for consideration is that whether the present petition by the petitioner / 2nd Defendant to pass an order setting aside the ex parte order passed against the petitioner on 15.04.2025 and pass suitable orders is to be allowed or not?

5. It is the case of the petitioner / 2nd Defendant the respondents have filed the above suit against the petitioner for recovery of money. It was contended that this petitioner received notice from the court calling upon him to appear before this Honourable court on 07.03.2025. Since the petitioner went to attend a condolence of the close relative at Otthakkalmandabam, the petitioner was unable to appear before this Honourable court on 07.03.2025 and consequently the suit was adjourned for the appearance of the petitioner on 15.04.2025 and on that day, as the Petitioner was suffering from viral fever did not turned up to the court and was called absent and set ex-parte on 15.04.2025.

6. The petitioner counsel urged that he got a valid defense in the above case and that non appearance on the day fixed, was neither willing nor wanton. The petitioner has come up with the application to set aside the ex-parte order passed against him on 15.04.2025. Unless the ex-parte order passed against the petitioner on 15.04.2025 is set aside he will be put too much loss and great hardship.

7. **Per contra**, the respondent counsel contended that the present petition is false, frivolous, vexatious and not maintainable both in law and on facts.

8. The respondent counsel urged that the reason adduced by the petitioner for non appearance on 07.03.2025 and 15.04.2025 are false, frivolous and fictitious and there is no documentary proof to substantiate his claims.

9. The respondent counsel further urged that the 1st Defendant is a proprietorship concern and the 2nd Defendant is the proprietor of the 1st Defendant and that the 2nd defendant has received the summons and has failed to appear on 07.03.2025. This court provided yet another opportunity to the petitioner for appearance on

15.04.2025, and as the 2nd Defendant failed to appear on 15.04.2025, the 2nd petitioner was set ex-parte.

10. The respondent counsel argued that the respondent / plaintiff has already filed batta for 1st defendant and the 1st defendant filed vakalath on 05.08.2025 and the copies were served upon the 1st Defendant on 23.08.2025 to enable him to file Written Statement.

11. The learned counsel for the respondent contended that the defendant has again filed a vakalath on 28.10.2025 i.e., for Defendants 1 & 2 along with Written Statement and the present application under Order 9 Rule 7 to set aside the ex-parte order against the petitioner / 2nd Defendant, which is untenable and shall not be entertained by this Hon'ble Court.

12. The respondent counsel finally argued that the present petition itself is not maintainable as the commercial courts act does not include the applicability of Order IX Rule 7 of Civil Procedure code in the commercial suit and prayed to dismiss with costs.

13. It is from the record that the present petition is filed by the 2nd defendant in the suit to set aside the exparte order passed against him on 15.04.2025. It is also from the record that the respondent / plaintiff has filed the present suit against the present petitioner / 2nd defendant and 1st defendant for the recovery of outstanding loan amount advanced to the defendants by the respondent bank.

14. It is also from the record that present petition has been filed by the petitioner on 28.10.2025, which is more than 6 months from the date of being set exparte.

15. It is also from the record that the respondent / plaintiff has already filed batta for 1st defendant and the 1st defendant filed vakalath on 05.08.2025 and the copies were served upon the 1st Defendant on 23.08.2025 to enable him to file Written Statement.

16. This court refers to the decision of **Hon'ble Himachal Pradesh High Court** in **Surender Kaur Vs Shri Jagtendra 2022 LiveLaw HP 31** wherein it was held that:

“After having perused provisions contained under Order 9 Rule 7 CPC, this court finds that application for setting aside ex-parte order can only be entertained, if it is filed before the conclusion of the arguments. Any application filed after the conclusion of the arguments is not maintainable and in that eventuality, person being aggrieved on account of proceeded ex-parte order has a remedy to file appropriate proceedings under Order 9 Rule 7 CPC praying therein to set aside ex-parte decree”

17. This court finds that the cause adduced by the petitioner is ‘good cause’ for non appearance and the ex-parte order against the petitioner be set aside.

18. From the facts unfolded, it could be seen that the petitioner has also filed written statement for the 1st and 2nd defendant. In view of the mandate of the Commercial Courts Act, the petitioner/ 2nd defendant and the 1st defendant has to file their written statement within 120 days of service of summons, which is admittedly not complied with. Thus the petitioner / 2nd defendant and the 1st defendant are precluded in filing their written statement and their right to file the written statement before this court is forfeited.

19. Before writing the concluding paragraph of this order, it is made clear that all the rights and contentions of the both the parties are preserved for trial and any view expressed in this order will neither impede nor serve as an impetus in the main suit. Thus the views expressed in this order are only for the limited purpose of deciding the present application/petition. The parties are at liberty to adduce oral and documentary evidence to substantiate their claims and could aid in eliciting the truth before this court.

In the light of the narrative, discussion and dispositive reasoning, this court is inclined to allow the petition, but in considering the nature of the suit and the present stage of the suit, this court imposes a cost of Rs.5,000/- to be paid by the petitioners/defendants to the respondent / plaintiff on or before 04.06.2026.

The Order is directly typed in computer by Typist, corrected and pronounced by me in this Open Court on this 21st Day of April, 2026.

Judge,
Commercial Court,
(Senior Civil Judge Cadre),
Coimbatore.

List of Documents:-

List of Documents the side of the Petitioners: Nil

List of Documents the side of the Respondents: Nil

Judge,
Commercial Court,
(Senior Civil Judge Cadre),
Coimbatore.

Fair Order.
IA.No. 2 of 2025.
Cos No. 960 of 2024.
Date: 21.04.2026.