

**IN THE COURT OF I ADDITIONAL DISTRICT & SESSIONS JUDGE,
CUDDALORE.**

Present : **Tmt.G.Saraswathi, M.L,**
I Additional District & Sessions Judge,
Cuddalore.

Thursday, the 16th day of July 2026

I.A.No.09 of 2026 in O.S. No.40 of 2017

(CNR No. TNCD01 – 000287 – 2017)

Bank of Baroda
represented by its Branch Manager,
Thirupapuliur.

... Petitioner / 4th Defendant

-Vs-

D.Mohan

... Respondent / 1st Plaintiff

This petition filed on 09.04.2026 came before me for final hearing on 15.07.2026. The Learned Counsel Mr.P.R.Balashankar, appeared for the Petitioner / 4th Defendant. The Learned Counsels M/s R.Lakshminarayanan and H.Sai Lakshmi, appeared for the Respondent / 1st Plaintiff. Upon hearing both sides and upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:

ORDER

This petition is filed under Order IX Rule 7 of CPC by the petitioner/ 4th defendant, seeking to set aside the exparte order passed on 10.12.2019 against the petitioner / 2nd respondent.

2. The brief averments of the petition :

The respondent filed the suit for partition and other reliefs. The petitioner states that due to transfer of bank staff and communication gap with counsel, the written

statement could not be filed on 10.12.2019 and it was set exparte. The default was not wilful; the petitioner is only a formal party and seeks setting aside of the exparte order to avoid hardship. Hence, this petition.

3. The brief averments of the Counter filed by Respondent / 1st Plaintiff :

The respondent/1st plaintiff denies the averments and contends that the petition is not maintainable. The petitioner/4th defendant was set exparte on 10.12.2019 for non-filing of written statement despite several hearings. It is further contended that the petition to set aside the exparte order was filed after about seven years without any petition to condone the delay, though the limitation prescribed is 30 days. The affidavit does not disclose sufficient cause for such delay. The respondent states that the petitioner has not explained the delay of more than 2500 days. The reasons of staff transfer and communication gap are not sufficient, and the plea that the Bank is only a formal party is inconsistent with the claim of hardship. Hence, the respondent prays for dismissal of the petition.

4. POINT FOR CONSIDERATION:

Whether the petitioner/4th defendant is entitled to have the exparte order dated 10.12.2019 set aside under Order IX Rule 7 CPC?

5. DISCUSSION ON THE POINT:

5.1 Admittedly, the petitioner herein was not originally arrayed as a defendant in the suit. The petitioner Bank was subsequently impleaded as the 4th defendant only on the petition filed for impleading. After such impleadment, amendment and filing of

the amended plaint, proper suit summons ought to have been served on the petitioner/4th defendant, enabling it to appear and file its written statement. The records show that, instead of ensuring such service, the matter was posted directly for written statement and, on 10.12.2019, the petitioner was set *exparte* for non-filing of written statement.

5.2 Under Section 27 CPC and Order V Rule 1 CPC, when a suit is duly instituted, summons shall be issued to the defendant to appear and answer the claim and to file the written statement within the prescribed time from the date of service of summons. Order V Rule 2 CPC further requires that every summons shall be accompanied by a copy of the plaint. Therefore, when a party is subsequently impleaded as a defendant, the procedural requirement of notice and service of summons assumes importance, as no party can be deprived of an opportunity to defend without proper notice.

5.3 Order IX Rule 7 CPC provides that where the Court has adjourned the hearing of the suit *exparte* and the defendant appears at or before such hearing and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs, be heard in answer to the suit as if he had appeared on the day fixed for his appearance. Thus, Rule 7 applies at the stage where only an *exparte* order has been passed and the suit is still pending. It enables the defendant to come on record before the final disposal of the suit, on showing good cause for earlier non-appearance.

5.4 Order IX Rule 13 CPC, on the other hand, deals with setting aside an *exparte* decree passed against a defendant. The said provision is attracted only after an

exparte decree is passed. In the present case, no exparte decree has been passed against the petitioner and the suit is still pending as against the other defendants. Hence, the present petition is properly considered under Order IX Rule 7 CPC and not under Order IX Rule 13 CPC. Consequently, the objection regarding limitation applicable to an application to set aside an exparte decree does not strictly arise at this stage.

5.5 The petitioner is a banking institution and not an individual person on whom personal liability can be immediately fixed by reason of one officer's default. In an institution, appearance and filing of pleadings are normally handled through authorised officers and counsel. In such circumstances, particularly when proper suit summons after impleadment is not shown to have been served on the petitioner Bank, a liberal view is warranted so that the matter may be decided on merits rather than on a technical default.

5.6 Further, when only an exparte order is passed and the suit is pending, there is no question of treating the petition as one barred by limitation as in the case of an application to set aside an exparte decree. The petitioner has assigned reasons that there was transfer of bank staff and communication gap with counsel. Considering the nature of the petitioner as a banking institution, the absence of proper service of suit summons after impleadment, and the fact that the suit is yet to be finally disposed of, this Court is of the view that sufficient cause has been shown for setting aside the exparte order dated 10.12.2019.

In the result, this petition is allowed. No costs.

Dictated to Steno-typist, transcribed and typed by her, corrected by me directly in my lap-top and pronounced by me in the open Court, on this the 16th day of July, 2026.

I Additional District and Sessions Judge,
Cuddalore.

List of witnesses and

exhibits on both sides: Nil

I Additional District and Sessions Judge,
Cuddalore.