

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

Present: Selvi.B.Phebe, B.A.,LLB.,

Additional District Munsif, Cuddalore

Friday, the 13th day of June – 2025

I.A.No.104/2024 in O.S.No.92/2004

1. N.Janardhanan (Died)

2. S.Prabhakaran

3. S.Premkumar

4. S.Sathishkumar

5. L.Devanathan

6. P.Prabhavathy

7. S.Selvam

.....Petitioners/Defendants

-Vs-

1. G.Muthukrishnan

2. G.Pandurangan

3. G.Gunasekaran

4. S.Sudhakaran

5. K.Siddharthan

6. K.Thangapazham

7. R.Ramamurthy

.....Respondents/Plaintiffs

Counsels on Record:

For Petitioners : Mr.S.Ramadas

For R1 to R7 : Mr.R.Rajavelavan

This petition came before this Court in the presence of both counsels and upon perusal of records and having stood over for consideration till this day, this court delivers the following....

ORDER

This is an application taken out by Petitioner under Order 9 Rule 7 r/w Section 151 of C.P.C to pass an order to set aside the exparte order dated 22.06.2007.

2) Gist of the Affidavit filed by the Petitioner:-

(i) The suit was posted on 22.06.2007 for filing written statement and counter. But only now the petitioners come to know that the written statement was not filed. The petitioners appointed Mr.Gnanavel to represent them in the case. The counsel expired during the proceedings of the case. Hence, they were not able to get the details of the case and also as to whether he filed the written statement or not. Non-filing of written statement and counter is neither willful nor wanton. Hence, sought to allow the petition.

3) Gist of Counter filed by the Respondents:

(i) This petition is not maintainable in the eye of law. The array of parties in the affidavit and petition itself is absolutely contrary to the litigative status of parties. There are other defendants in the suit, and they have not made as parties in the instant application. Hence, the petition needs to be rejected at the threshold.

(ii) It is wrong to state that the petitioners was placed exparte on 27.03.2012. But he was set exparte way back on 22.06.2007. It is further wrong to

state that the petitioner appointed the counsel by name Gnanavel. On the other hand, the petitioners had remained *exparte* all along in the suit right from the beginning. He did not engage any counsel. The petitioner has deliberately sworn to a false affidavit.

(iv) In any event, the *exparte* order cannot be set aside beyond three years from the date of *exparte* order in view of Article 137 of the Limitation Act. Hence, on that basis, the application is not maintainable. The petitioner being a purchaser from the 1st defendant is bound by the result of the suit and therefore the application is not maintainable.

4) *The point for consideration is whether the petition filed by the petitioners under Order 9 Rule 7 r/w Section 151 of C.P.C is to be allowed or not?*

5) No witnesses were examined nor any documents were marked on either side.

Points:

6) **The counsel for the petitioner argued that,** there is no specific period of Limitation given under the Limitation Act, 1963 for setting aside the order of *exparte*. The counsel pressed into service the order of *the Hon'ble Madras High court in the case of S.Kalavathu vs. Arulmigu Mariamman Vignraham, in C.R.P. (MD).No.2093/2019* for the proposition that an application under Order 9 Rule 7 of CPC can be allowed despite delay, as long as that suit is pending and not disposed of by imposing heavy costs.

7) (i) **The counsel for the respondents argued that,** initially the affidavit

was filed stating that, the petitioner was set *ex parte* in 27.03.2012. However, later they have changed to 22.06.2007. It is not correct to state that the petitioner has engaged a counsel and after his demise, he was not able to know about the status of the case. The petitioner never engaged a counsel and he remained *ex parte* since filing of suit. In such circumstance, he has sworned to a false affidavit for which he is liable to be prosecuted for perjury.

(ii) Further he argued that, the petitioner herein is the *lis pendens* purchaser and his rights would depend only upon the outcome of this suit and hence his rights are protected through 2nd defendant in the suit. He further submitted that, when no limitation is prescribed, Article 137 of Limitation Act would come into play. If that's the case an application for setting aside an *ex parte* order has to be prepared within a period of 3 years. The counsel for the respondent relied on the Judgment of Hon'ble Madras High Court in the case of *Visalakshi vs. Umamathy & others reported in 2015-3-L.W.332* for the proposition that Art.137 of Limitation Act applies to application under Order 9 Rule 7 petitions. Hence, prayed to dismiss the petition.

8) Analysis:-

(i) On perusal of records, it is found that the petition has been filed after a period of 20 years. The petitioner herein has been set *ex parte* on 22.06.2007 on the ground that D7 was called absent, no representation from his side and no Written statement has been filed. From the records it, could be seen that he has not engaged

any counsel named Mr. Gnanavel at any point of time. But initially a counsel named K. Thamburasa has filed vakalat for D7. Even then, the petitioner herein has not filed written statement. It is a settled principle of law that one has to exhibit a good reason and sufficient cause for allowing O.9 R.7 application. The only reason stated by the petitioner is that the counsel died and he was not able to know about the case.

(ii) This court is not able to view this as a good reason and sufficient cause, since the counsel as stated by him has never entered appearance for him and all throughout the records, it could be seen, he was represented by other counsel. That being the case, he cannot swear to a false affidavit with incorrect statements.

(iii) Now after 20 years he has come forward with the petition to set aside the exparte order which is impermissible without sufficient cause. Filing an affidavit with wrong statements is a condemnable Act. However, this court is also aware that a liberal approach has to be taken while dealing with the O.9 R7 application. At this juncture it would be apt to refer to *the Judgment of Hon'ble Madras High Court in Pilla Reddy And Ors. vs Thimmaraya Reddy* reported in (1997)1MLJ37, The relevant passages are as follows;

“10. The only other question which requires consideration is, whether the petitioner can be permitted to file written statement and agitate the matter from the date of pleadings

11. Under Order 9, Rule 7, C.P.C, the court can permit the petitioners to

participate in the proceedings from the date they appear. For the said purpose, they need not show any good or sufficient cause. Even without written statement, they could be permitted to cross-examine witnesses and also adduce evidence. If they are to be permitted to file written statement, then Order 9, Rule 7, C.P.C. contemplates that they should show good cause.

12. In Sarkar's 'Law of Civil Procedure', commenting on Order 9, Rule 7, in Eighth Edition (1992), at page 718, the learned Author says that 'the rule is applicable if the defendant wants the court to retrace its steps and to be allowed to file written statement. But if the defendant wants to proceed from the stage already reached, he will have an absolute right without obtaining the court's permission to take part in the proceeding.' The learned Author further says that 'Rule 7 cannot be read to mean that defendant cannot be allowed to appear at all if he does not show good cause. All it means is that he cannot be relegated to the position he would have occupied if he had appeared. He cannot be stopped from participating in the proceedings simply because he did not appear in the first or some other hearing. He will have to show good cause for his previous absence, only if he desires to be relegated back to the position in which he would have been put if he had appeared at the previous hearings, so that the proceedings in his absence could be reopened.'

14. On the basis of the above principles of law, let us consider whether the petitioners have shown good cause for relegating back to the position of filing

*written statement along with the application.... Even though the suit was filed in 1986, except the filing of pleadings, the suit has not progressed till date. **Therefore, there cannot be any question of recalling the witness or adducing evidence or re-opening the evidence already adduced. None of these will arise. When the suit has not reached any stage, I do not think that the plaintiffs also will be put to any hardship in case the written statement is accepted.** The trial is yet to begin”*

9) In the case on hand, as already discussed the petitioner has not shown good cause for failing to file written statement. Even then, petitioner being a lis pendens purchaser, his rights are protected as his vendor the 2nd defendant is prosecuting the case and the petitioner would be bound by the outcome of this suit. Further, the suit is of the year 2004 and the matter is at the stage of plaintiff side evidence and 2 witnesses has been examined. If at all, the application is allowed and the petitioner is allowed to let in the written statement after all these 20 years, it would amount to abuse of process of court as the case would once again relegate back to the stage of pleadings. Further there would be recalling of witness, adducing evidence and re-opening the evidence, which would further slowdown the progress of the case and would lead to chaos and confusion in proceedings. Further, all the parties to the litigation would suffer hardship. It is not an accepted practice, as held by the Hon’ble Madras High Court in the above cited Judgment.

In view of all the above discussions, this court is inclined to allow the petition on a condition to pay a cost of Rs. 3000/- on or before 18/06/2025 failing which the petition stands dismissed. Further, the petitioner is permitted only to prosecute the proceedings from this stage, i.e., they will not be permitted to file their pleadings or permitted to retrace the steps already taken by court. But is permitted to cross-examine witnesses and also adduce evidence and to proceed with the case. For compliance Call on 20.06.2025.

In fine, this petition is allowed on costs.

Dictated to Steno Typist, typed and printed out by her and corrected and pronounced by me in open court, on this day, the 13th of day of June 2025.

Additional District Munsif,
Cuddalore.

List of Witnesses and documents on Both sides:- -NiL-

Additional District Munsif,
Cuddalore.

ADM Court, Cuddalore.
Fair Order
I.A.No.104/2024
in O.S.No.92/2004
Date: 13.06.2025
