

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU DISTRICT.**

Present : **Thiru.T.Chandrasekaran, M.L.,**
Principal District Judge, Chengalpattu.

Thursday the 10th day of July 2025

I.A.No.3/2025 and I.A.No.4/2025
in
O.S.No.184/2013

I.A.No.3/2025 :

N.Sundararajan . . . Petitioner / 5th Defendant.

/Vs/

Rani Residency Flat Owners Welfare Association,

Represented by its Secretary T.Balakrishnan,

Sembakkam, Chennai - 600073.

. . . Respondent / Plaintiff.

I.A.No.4/2025 :

N.Sundararajan,

Represented by its Special Power of Attorney

E.Ramesh

. . . Petitioner / 5th Defendant.

/Vs/

Rani Residency Flat Owners Welfare Association,

Represented by its Secretary T.Balakrishnan,

Sembakkam, Chennai - 600073.

. . . Respondent / Plaintiff.

Both the petitions came up before me for final hearing on 20.6.2025, in the presence of Thiru.Rajendran Raghavan, Advocate for the petitioner, and Thiru.E.RaghuRaj, Advocate for the respondent, upon hearing the arguments of both side counsel, perusing the entire records and having stood over the matter for consideration till this day, this court delivers the following,

COMMON ORDER

I.A.No.3/2025 :

This petition is filed by the petitioner / 5th defendant under Section 151 of CPC, to permit him to reopen his side evidence.

I.A.No.4/2025 :

This petition is filed by the petitioner 5th defendant under Order 3 Rule 2 and Section 151 of CPC, to permit him to let in evidence through his Special Power of Attorney E.Ramesh.

2. The averments set out in the petition filed by the petitioner in I.A.No.3/2025 in brief read as follows :

The petitioner is the 5th defendant in the suit. The suit schedule property was developed and constructed and sold by the 1st defendant in the year 2002 to the petitioner's first predecessor in title and further the same property was transferred through various further deeds and finally to the petitioner by a sale deed dated 9.9.2005. Since then the petitioner had been in peaceful and perfect possession. While so, the

plaintiff had filed the above suit in O.S.No.184/2013 for cancellation of registered sale deed of the year 2002 and further with multiple prayers. After the petitioner / 5th defendant filed written statement and further cross examination of plaintiff in the above O.S.No.184/2013 was completed the case stood over for letting in evidence from defendants side on 31.7.2024. On the said date the petitioner / 5th defendant was in tour and his counsel also held up in multiple courts and he instructed his junior counsel to seek for a short adjournment. Unfortunately, before the said junior counsel could reach from the other court to this court for representation, the case was heard and adjourned to 19.8.2024 with the direction that the chance for evidence of present defendants as closed and posted the case for arguments. If the said order is not set aside, the petitioner / 5th defendant would be put to grave injustice and loss, as the substantial merits of the case stands in his favour. On the contrary the respondent / plaintiff would not suffer any legal infirmities as the submission of evidence and matters concerned with merits necessitate to be allowed in the better interest of justice. The petitioner is travelling and because of that he is frequently out of station on tour and facing difficulty to present evidence. Therefore the said order has to be set aside and restored the file to the stage of letting in evidence by the petitioner / 5th defendant, through his special power of attorney, E.Ramesh. Hence, the petition.

3. The averments set out in the petition filed by the petitioner in I.A.No.4/2025 in brief read as follows :

The petitioner is the special power of attorney agent of 5th defendant. The petitioner's principal is the owner of the suit property. The petitioner / special power of attorney agent is conversant with the facts and circumstances of the case from the records available and as duly apprised by his principal, the petitioner / special power of attorney is duly competent to file this affidavit. Unfortunately the petitioner/special power of attorney agent's principal is unwell and has to go out of Chennai frequently on treatment and other works, hence he appointed the petitioner as his agent to represent in the above case and to let in the evidence of 5th defendant through the petitioner. Hence, the petition.

4. The common averments set out in the counter filed by the respondent in both the IAs 3/2025 and 4/2025 in brief read as follows :

On 28.9.2022 the plaintiff had given his evidence in chief examination as PW1 and subsequently tendered himself for cross examination. The 5th defendant who appeared through the counsel failed to cross examine PW1 and was set exparte. The 5th defendant filed an application in I.A.No.2/2022 to set aside the exparte order dated 31.10.2022 and the same was ordered on 4.10.2023. Even thereafter the defendant did not let in evidence despite repeated adjournments and accordingly on 31.7.2024 this court closed the evidence of defendants side

and posted the case for arguments. The plaintiff also advanced his arguments by presenting written arguments. Thereafter the present petitions are filed. Having felt that the petitioner / 5th defendant may not succeed, he is filing application one after the other and protracting the proceedings to his whims and fancies. Hence, prayed for dismissal of both the petitions.

5. The point for consideration is whether the evidence of petitioner / 5th defendant has to be let in through his special power of attorney agent by reopening the side of 5th defendant in the suit?

6. On Point :

Heard. Perused the records. In the suit, summons was served to the petitioner / 5th defendant and on 23.6.2014 he entered appearance before this court through his counsel and the other defendants remained exparte. Thereafter the suit stood posted for filing of written statement of petitioner / 5th defendant, and after several adjournments, the petitioner / 5th defendant was set exparte on 1.3.2016 i.e., after 2 years and on 9.9.2016 an exparte judgment and decree was passed by this court. Only thereafter, the petitioner / 5th defendant had filed applications under Section 5 of Limitation Act in I.A.No.247/2018 along with application under Order 9 Rule 13 CPC in I.A.No.1/2019 on 3.10.2017 i.e., after lapse of one year, to set aside the exparte decree. The said Section 5 application was allowed on 11.12.2019 on payment of heavy cost. Subsequently the set

aside application which was filed along with written statement of petitioner / 5th defendant was allowed on 5.3.2020.

7. Thereafter issues were framed on 25.3.2022 and the trial commenced on 28.9.2022 and then adjourned to 31.10.2022 for cross-examination of PW1 by petitioner / 5th defendant. But on the said date, as the petitioner / 5th defendant was called absent and no representation for him, he was set exparte. Immediately on the next hearing on 28.11.2022 set aside application in I.A.No.2/2022 was filed by the petitioner / 5th defendant and the same was allowed on 4.10.2023. The petitioner / 5th defendant had cross-examined the respondent / plaintiff in full on 13.12.2023 and plaintiff's side evidence was closed on 11.3.2024 and the suit was posted for defendant's side evidence on 25.3.2024. However the petitioner / 5th defendant did not come forward to adduce evidence on his side till 31.7.2024, therefore the defendant's side evidence was closed and the suit stood posted for arguments. Immediately on 19.8.2024 i.e., on the very next hearing, the petitioner / 5th defendant came forward with the present applications.

8. From the above facts, it is clear that the petitioner / 5th defendant is not genuine in conducting the case, wantonly not proceeding the case by remaining exparte, and filing petitions one after the other to set aside the exparte order, just to protract the proceedings of the case. Because of the lethargic attitude of the petitioner / 5th defendant, the respondent /

plaintiff is put to severe hardship and irreparable loss. Further, the precious time of the court and plaintiff is also wasted by the petitioner / 5th defendant. Therefore, the reason stated by the petitioner / 5th defendant that because of his travelling he could not appear before this court for the hearings is not acceptable because of the above said facts. However, considering the nature of suit and in order to reach a fair justice, it is necessary to examine the petitioner / 5th defendant's side witness, by reopening the case on his side and permit him to let in evidence through his power of attorney. The balance of convenience lies on the petitioner only. Therefore, the petitions are deserved to be allowed, but on appropriate cost.

9. In the result, the applications in I.A.No.3/2025 and 4/2025 will be allowed on payment of cost of Rs.5,000/- to the other side on or before 23.7.2025, failing which the petitions shall stand dismissed. Call on 24.7.2025.

Typed to my dictation, corrected and pronounced by me in open court, on this the 10th day of July 2025.

Principal District Judge,
Chengalpattu.

Both side witness and exhibit :
Nil.

Principal District Judge,
Chengalpattu.