

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

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Tuesday the 27th day of August 2024

I.A.No.5/2024
and
I.A.No.4/2024
in
O.S.No.30/2015

I.A.No.5/2024 :

Palani Ammal . . . Petitioner / 1st Defendant.

/Vs/

1. B.Ramalingam . . . Respondent / Plaintiff.

2. A.Kanagavalli

3. S.Selvi

4. Alexander

5. M/s.Zenith Builders,
represented by its authorized signatory,
Thiruvanmiyur, Chennai - 600 041.

6. Kalaiarasi . . . Respondents / Defendants.

I.A.No.4/2024 :

Palani Ammal . . . Petitioner / 1st Defendant.

/Vs/

1. B.Ramalingam . . . Respondent / Plaintiff.

2. A.Kanagavalli

3. S.Selvi

4. Alexander

5. M/s.Zenith Builders,

represented by its authorized signatory,
Thiruvanmiyur, Chennai - 600 041.

6. Kalaiarasi . . . Respondents / Defendants.

These two petitions came up before me in this court for final hearing on 7.8.2024 in the presence of Tvl.C.Shyaamala, T.Aswini and R.Vinothkumar, Advocates for the petitioner, and Thiru.R.Sugumar, Advocate for the respondents, upon hearing the arguments of petitioner's counsel, perusing the entire records and having stood over for consideration till this day, this court delivers the following,

COMMON ORDER

I.A.No.5/2024 :

This petition is filed by the petitioner / 1st defendant under Section 151 CPC to reopen the main suit posted for judgment and to set aside the exparte order passed against her by this court on 13.12.2023 for cross examination of PW1.

I.A.No.4/2024 :

This petition is filed by the petitioner / 1st defendant under Order 9 Rule 7 and Section 151 CPC to set aside the exparte order passed by this court on 13.12.2023 for cross examination of PW1.

2. The brief case of the petitioner in common :

The suit was posted for cross of the respondent / plaintiff on 13.12.2023. The senior counsel for the petitioner was ready to come down

for cross in the afternoon session when she had after lunch had some giddiness and vomiting and she could not take up the travel from Parrys to Chennai and on doctor's advise she had left to her home for medication and rest. As she is aged 57 years, the petitionr could not put any pressure upon her too. The junior counsel appearing for the petitioner in this court had been informed to get a date as the senior was not well and cannot appear to court on that day in the afternoon session. She had immediately got an adjournment petitioner and filed the same mentioning the reason in it. This court had dismissed the said petition not aware of the situation in which the senior counsel was. Her counsel had been under rest and has been back to profession only after Pongal holidays. Therefore, the petitioner / 1st defendant was set exparte on 13.12.2023. The case is posted for judgment today and the petitioner has filed two applications, one application in IA 5/2024 to reopen the petition, another application in IA 4/2024 to set aside the exparte decree passed against the petitioner / 1st defendant. Hence, prayed to allow the applications.

3. The common averments of counter filed by the 1st respondent in brief :

The petitioner / 1st defendant, local counsel as well as senior counsel are very well know about the court proceedings and they can check the case details through online. The petitioner / 1st defendant's counsel has not chosen to abide the conditions imposed by this court for cross

examination of PW1 on various hearings. On 17.10.2022 onwards the petitioner's senior counsel and her junior counsel have not chosen to cross examine the respondent / PW1. The petitioner / 1st defendant has already filed a petition in IA 2/2023 to set aside the ex parte order and this court has imposed Rs.500/- towards costs. It is the bounden duty of the counsel to appear before this court and cross examine the 1st respondent -PW1. The cross examination of PW1 was posted not only on 13.12.2023 but posted from 17.10.2022 onwards. Only to protract the proceeding, the petitioner / 1st defendant filed this vexatious application wantonly and willfully. The delay for cross examination is inordinate one. Hence, prayed for dismissal of petition.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This petition is filed to set aside the ex parte order passed against the 1st defendant and to allow the 1st defendant to cross examine the PW1. The suit is filed for declaration of plaintiff's title and for consequential injunction. The reason stated by the petitioner for having remained ex parte that her counsel was travelling from Chennai to conduct cross examination of PW1 but unfortunately she fell sick that is the reason PW1 was not cross examined on the day fixed by the court.

6. In the counter the petitioner / 1st defendant states that already the petitioner filed similar application in IA 2/2023 which was allowed on payment of cost of Rs.500/-. It is objected that the reason stated in the petition is not genuine only to harass the PW1. It is true that the petitioner / 1st defendant without sufficient reason filed this application, but only to drag the proceedings. It is true that it is the 2nd application, earlier application was allowed on 25.9.2023. However, in the interest of justice petition will be allowed on payment of cost.

7. As the result, petitions will be allowed on payment of cost of Rs.3,000/- to the 1st respondent / plaintiff to be paid on or before 27.9.2024, otherwise petitions stand dismissed. Call on 30.9.2024.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 27th day of August 2024.

Principal District Judge,
Chengalpattu.

Both side witness and exhibit :

Nil.

Principal District Judge,
Chengalpattu.