

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

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

Wednesday the 26th day of June 2024

I.A.No.3/2023
in
O.S.No.304/2015

1. O.Gunabalan
2. G.Selvakumar
3. Joy . . . Petitioners / Defendants.

/Vs/

1. P.P.Ramesh Kumar . . . 1st Respondent / Plaintiff.
2. S.Gnanaraj . . . 2nd Respondent / 2nd defendant.

This petition came up before me in this court for final hearing on 17.4.2024, in the presence of Thiru.V.Benedict Vincent, Advocate for the petitioners and Tvl.K.Rajakumar, M.Prabhakaran and A.Jayavel, Advocates for the 1st respondent, upon hearing the arguments of both side counsel, perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed by the petitioners / defendants 3 to 5 under Order 9, Rule 7 CPC, to set aside the exparte order passed against the

petitioners / defendants 3 to 5 on 7.8.2023 in O.S.No.304/2014 on the file of this court.

2. The case of the petitioner in brief :

The respondent / plaintiff filed the above suit for a direction, directing the petitioners / defendants to pay jointly and severally a sum of Rs.16,29,232/- together with further interest at 18% per annum on the principal amount of Rs.10,00,000/- from the date of plaint until realization. The suit was posted for cross examination of PW1 on 11.1.2023 and the petitioners / defendants 3 to 5 have failed to cross examine the PW1 and were set exparte on 7.8.2023. Now the suit is posted for judgment on 15.9.2023. As the petitioners' counsel had been engaged in some other court, they were unable to cross examine the PWs and while he reached the court it was informed that the case was posted for judgment. Hence, the petition.

3. The brief averments of counter filed by the respondent / plaintiff :

The suit for recovery of money for Rs.16,29,232/- against the defendants and the same was pending and the suit was instituted in the year 2015 and for past 8 years the defendants were dragging the case intentionally and the defendants were filed unnecessarily filed several

intraocular application for unwantonly and willfully and this petition is liable to dismissed with costs.

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

5. Point :

This petition is filed under Order 9 Rule 7 CPC to set aside the exparte order passed against the defendants 3 to 5. The suit is filed for recovery of sum of Rs.16,29,232/-. The plaintiff examined in the chief examination and thereafter posted for cross examination. The petitioners / defendants failed to cross examine the plaintiff therefore, they were set exparte. This application is filed by three defendants except 2nd defendant. The reason stated by the petitioner that their counsel engaged in other court, therefore unable to cross examine the plaintiff. The reason stated by the petitioners is not acceptable as if the petitioners present in the court and represented for pass over, the court would normally pass over the matter till the end of the court hours, but since no representation till the end of court hours, defendants were set exparte.

6. Therefore the reason stated by the petitioners is not acceptable. However in the interest of justice, this court feels appropriate to direct the petitioner to deposit a portion of the claim amount. Thereby the court feels it is appropriate to direct the petitioners to deposit 1/4th of the claim

amount i.e., Rs.4,00,000.- because the suit is of the year 2014.

7. As the result, petition will be allowed in deposit of Rs.4,00,000/- into the court to be deposited on or before 8.8.2024, otherwise the petition stands dismissed. Call on 9.8.2024.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 26th day of June 2024.

Principal District Judge,
Chengalpattu.

Both side witness and exhibits :

Nil.

Principal District Judge,
Chengalpattu.