

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
CHENGALPATTU.**

**Present:- Tmt.K.Kayathri, M.A.B.L.,
Additional District Judge, Chengalpattu**

**IA.No.1/2024 in OS No.340/2022
(CNR No: TNKP01-003549-2022)
Tuesday, the 9th day of July 2024**

Samadhanam

...Petitioner/Defendant

//Versus//

Sundharam

...Respondent/Plaintiff

This Petition coming on 20.6.2024 for final hearing before this court in the presence of Thiru.A.Dhayalan, Advocate for the Petitioner/defendant and M/s.K.Ayyasamy, S.Jothi and V.Mohanraj, Advocates for respondent/Plaintiff and upon hearing the arguments of both sides and perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

This Petition filed under Order 9 Rule 7 and Sec.151 of CPC to set aside the exparte order dated 06-03-2023 passed against the Petitioner/defendant in the above case.

2. Petition averments in brief as follows:-

The petitioner is the defendant in the suit. The respondent has filed the suit for recovery of money from the petitioner. Due to petitioner's ill-health, she could not attend the Court and file vakalath on 06-03-2023. In the meantime, the petitioner was set exparte. The petitioner has undergone uterus operation and admitted in the Hospital during May 2023 and prior to that regularly undergone

checkup in the hospital. The absence of the petitioner is neither wilful nor wanton and has filed written statement along with this petition. If the petition is not allowed, she will be put to irreparable loss and hardship. Hence the petition.

3. Brief averments of the counter is as follows:

The petition is not maintainable under law and on facts. The petitioner's counsel undertakes to file Vakalath on 13/2/2023 and then the case was posted on 06/3/2023 and on that day since Vakalath was not filed, exparte order was passed against the petitioner and the case was adjourned to exparte evidence. Thereafter, the plaintiff was examined as PW1 and the case was posted for plaintiff's side further evidence on 26/2/2024 and on that occasion, the present vexatious petition has been filed only to drag the proceedings. Further the petitioner has not filed any medical records to prove the uterus operation undergone by her. Further, it has been stated that the petitioner was admitted in the hospital during May 2023, but, she has not given any reason for her absence on 06/3/2023. Absolutely there is no merit in the petition and the same is liable to be dismissed.

4. The points for Consideration in the above petition is:-

1. Whether the petition is to be allowed or not?

5. Points:-

Heard both sides. The petitioner is the defendant has filed the petition to set aside the exparte order passed against her in the suit. On perusal of records, the defendant was set exparte by this court for having failed to file vakalath and written statement. The reason assigned by the petitioner is that due to her ill-health, she could not attend the

Court and file vakalath on 06-03-2023. It is her further contention that she has undergone uterus operation and admitted in the Hospital during May 2023. Per contra, the respondent has filed counter denying the averments made in the petition-affidavit and contended that the present petition has been filed only to drag on the proceedings.

6. In these rival contentions, no doubt, the suit was instituted in the year 2022 as against the petitioner and since the petitioner failed to file vakalath and written statement, she was set expare on 6.3.2023. Though the petitioner has not filed any medical certificate to prove her ailment, to prove her bonafide the petitioner has filed the written statement along with the above petition. Irrespective of the rival contentions and to ensure fair trial, this court is of the view that in the interest of justice, the petitioner is to be given an opportunity to contest the case on merits. However, this court is inclined to allow the application with necessary terms.

Finally, this petition is allowed on payment of cost of Rs.2000/- to be paid by the petitioner/defendant to the Respondent/plaintiff on or before 9.8.2024, failing which the petition shall stand dismissed automatically. Call on :12.8.2024.

Dictated to the Shorthand writer and computerized by her and corrected and pronounced by me in open Court, this the 9th day of July 2024.

sd/-K.Kayathri

Additional District & Sessions Judge
Chengalpattu.

Both side Witnesses And Exhibits : NIL

sd/-K.Kayathri

Additional District & Sessions Judge
Chengalpattu.

Fair/Draft Order
IA.No.1/2024 in OS.340/2022
Dated: 9.7.2024
ADJ/CPT

IA.No.1/2024 in OS.340/2022

Dated: 9.7.2024

ORDER PASSED

Finally, this petition is allowed on payment of cost of Rs.2000/- to be paid by the petitioner/defendant to the Respondent/plaintiff on or before 9.8.2024, failing which the petition shall stand dismissed automatically. Call on :12.8.2024.

ADJ/CPT