

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM**

**Present: Mr. T.GANESH B.A., B.L.,
Subordinate Judge,
Madurantakam**

Saturday, the 02nd day of June, 2025

**I.A. 2/2024
in
O.S No. 101/2022
(CNR.No.TNCG13-000405-2022)**

Balan

...Petitioner /11th Defendant

Vs..

1. Kuppammal
2. Govindhasamy
3. Chandra
4. Devaki
5. Santhi
6. Kandhan
7. Ramki
8. Ramdoss

... Respondents/Plaintiffs

1. Nagammal
2. Durai
3. Anjalakshi
4. Savithri
5. Selvi
6. Muniyammal
7. Manikandan
8. Murugesan

9. Perumal
- 10.Karpagam
- 11.Arumugham
- 12.Chokkammal
- 13.Rajendiran
- 14.Muniyammal
- 15.Santhi
- 16.Panchatcharam
- 17.L. Suren

...Respondents/Defendants 1 to 10, 12 to 18

This petition coming up for final hearing on 02.04.2025 in the presence of Mr.B.Rajesh, Counsel for the Petitioner/ 11th Defendant and Mrs.S.Jothi, Counsel for the 1st to 8th Respondents/Plaintiffs and M/s. K.Ayyasamy, S. Senthilkumaran and V. Mohanraj, counsel for 1 to 7 and 13 to 17 respondents/defendants and 1 to 7 and 13 to 16 respondents/defendants were called absent and set exparte and M/s. D. Parthiban and S. Praveen, counsel for 8th and 9th respondents/defendants and 8th and 9th respondents/defendants were called absent and set exparte and M/s. V.Godwin, R. Venkatramani and N. Sakthimurugan, counsel for 17th respondent/defendant and after hearing the arguments on both sides, upon perusing the case records and having stood over for the consideration of this court till date, this court delivered the following..

ORDER

This petition is filed by the Petitioner/11th Defendant U/s. IX Rule 7 of CPC to set aside the exparte order dated 19.06.2024 passed against the petitioner.

2. Averments of the petitioner:

The petitioner is the 11th defendant in the above suit, which has been filed by the respondents/plaintiffs for partition against the petitioner and the respondents/defendants 1 to 10 and 12 to 18. Petitioner was set ex parte on 19.07.2024 due to non-filing of the Written Statement. The petitioner was unable to file the Written Statement in time as he was instructed by his counsel to collect certain crucial documents necessary for preparing the same. The process of collecting those documents took an unexpectedly long time, which delayed the filing. The petitioner has now successfully gathered the required documents and is filing this petition along with his Written Statement, praying to set aside the ex parte order dated 19.07.2024. The petitioner has a good case on merits, and unless the ex parte order is set aside, he will suffer irreparable loss and hardship. No prejudice will be caused to the other side if the ex parte order is set aside, and the balance of convenience is in favour of the petitioner. Hence the petitioner files this petition for set aside the exparte order, dated 19.06.2024.

3. Averments of the respondent :

The respondents are the plaintiffs in the main suit and they deny the allegations made in the affidavit filed by the petitioner/11th defendant, particularly the claim that he was set ex parte on 19.07.2024 due to the non-filing of a Written Statement and that his counsel had instructed him to collect certain important documents prior to the ex parte order. The petitioner's was unable to collect the documents in a timely manner due to delays in the process is denied as false, fabricated, and intended solely to justify the filing of the present vexatious petition and after receipt of the summons, the petitioner/11th defendant entered appearance through his counsel before this Court on

22.06.2023. Thereafter, this Court granted multiple opportunities to the petitioner to file his Written Statement on 17.08.2023, 19.10.2023, 08.12.2023, 07.03.2024, 28.03.2024, and finally on 19.06.2024. However, on 19.06.2024, as the petitioner/11th defendant and certain other defendants remained absent, this Court was pleased to pass an ex parte order against them. Hence, the averment in the affidavit that the petitioner was set ex parte on 19.07.2024 is factually incorrect. The reasons stated by the petitioner for the non-filing of the Written Statement are neither genuine nor bona fide. Hence, the above vexatious petition may be dismissed with cost.

4. Heard both sides. Perused the records carefully.

5. Point:

Whether this application can be allowed or not?

It is alleged that due to non-filing of the Written Statement, the petitioner/ 11th defendant was set ex parte by this Court on 19.06.2024. The petitioner contends that the delay was caused by the prolonged process of collecting essential documents as instructed by his counsel, and that the failure to file the Written Statement was neither wilful nor deliberate. The respondents oppose the petition, submitting that several opportunities were granted, but the petitioner failed to make use of them and remained absent on the relevant dates. They further contend that the present application is not bona fide and deserves dismissal.

It is well settled that there is no statutory limitation for filing a petition to set aside an ex parte order in a pending suit. Therefore, the objection raised by the respondents regarding delay cannot be sustained. Further, no serious prejudice would be caused to the respondents if the matter is heard on merits. Considering the nature of the suit, the petitioner's explanation, and the fact that the Written Statement is filed along with this petition, this Court is inclined to

allow the application in the interest of justice. But for non filing the written statement for more than a year and filing of this application after a period of 5 months from the date of exparte order, this court inclined allow this application on cost. Hence this point is decided accordingly.

6. Result:

In fine the application is allowed on conditions that the petitioner shall pay a sum of Rs. 500.00 (Rupees Five Hundred) only to the respondents/plaintiffs on or before 09.06.2025. call on 10.06.2025.

Dictated by me to the Steno-Typist, typed by him in the computer directly, corrected and pronounced by me in the open court, this the 02nd day of June, 2025.

Subordinate Judge,
Madurantakam

I. Petitioner side evidence and Exhibits :

Nil

II. Respondents side Evidence and Exhibits :

Nil

Subordinate Judge,
Madurantakam

	FAIR/DRAFT ORDER I.A No. 2/2024 IN O.S No. 101/2022 D.D: 02.06.2025 SUB COURT, MADURANTAKAM
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in
O.S No. 101/2022**

Dated: 02.06.2025: ORDER

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