

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

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

Thursday, the 07th day of August, 2025

I.A No. 2/2025

in

O.S No. 36/2024

(CNR.No.TNCG13-000056-2024)

Srividya

...Petitioner/4th Defendant

..Vs..

S. Palani

...Respondent/Plaintiff

1. S. Manokaran

2. Vijaya @ Vijayalakshmi

3. K. Satheesh

4. Rajakanthan

... Respondents/Defendants 1 to 3 & 5

This petition coming up for final hearing on 16.07.2025 in the presence of M/s.V.Rajabharathi, A.John Basha and R.Kowsalya, Counsels for the Petitioner/4thDefendant and Mr.S.Subramanian, Counsel for the respondent/plaintiff 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 Under Order IX Rule 7 of Civil Procedure Code to set aside the exparte order dated 18.12.2024 passed against him.

2. Averments of the petitioner:

Petitioner is the 4th defendant in the suit. The suit is posted on 18.12.2024 for filing written statement. On the said date of hearing, petitioner's counsel was not well and hence the petitioners were unable to file the written statement into court. Hence the petitioner was called absent and set exparte on 18.12.2024 against her. Hence the petitioner files this application to set aside the exparte order dated 18.12.2024 in O.S 36/2024 passed against him.

3. Memo of counter filed by counsel for respondent/plaintiff in brief:

The respondent denies the allegations set out in the affidavit. The petition to set aside exparte order dated 18.12.2024 is not maintainable law and fact. The petition affidavit allegation due to illness are here by strictly denied. There is no documents for illness. The petition only drag the case for delay. Hence, the respondent prays for dismissal of the application.

4. No oral or documentary evidence adduced by both parties.
5. Heard both sides. Perused the records carefully.

6. Point:

“Whether this application can be allowed or not?”

This petition is filed under Order IX Rule 7 of the Code of Civil Procedure, 1908, seeking to set aside the ex parte order dated 18.12.2024 passed against the petitioner/4th defendant in O.S. No. 36/2024.

It is alleged that due to illness of her counsel, the petitioner was unable to file the written statement into court. Hence this application. On the other hand the respondent defend that the reason set out is false and found for the application.

Upon careful consideration of the submissions and the material available on record, it appears that the petitioner has offered a plausible explanation for her default. Although no medical certificate is annexed to substantiate the claim of illness of her counsel, the fact remains that the petitioner has approached this Court without

undue delay and has filed the written statement along with this petition. There is no indication of deliberate negligence or mala fide intention.

It is well settled that procedural laws are meant to advance justice and not to thwart it. Courts are generally inclined to afford a fair opportunity to parties to present their case on merits, especially when no irreparable prejudice is likely to be caused to the opposite party. In the present case, denying the petitioner an opportunity to participate in the proceedings would result in undue hardship, whereas allowing her to contest the suit on merits would enable adjudication in accordance with law. Any inconvenience caused to the plaintiff can be compensated by appropriate terms. Accordingly, this Court finds merit in the petition and is inclined to allow the same with conditions. Hence this point is decided accordingly.

7. Result:

In fine this application is allowed on conditions that the petitioner shall pay a sum of Rs. 500.00 (Rupees Five Hundred) only to the respondent/plaintiff on or before 12.08.2025. call on 13.08.2025.

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 07th day of August, 2025.

Subordinate Judge,
Madurantakam

Both sides Evidence and Exhibits :

Nil

Subordinate Judge,
Madurantakam

FAIR/DRAFT ORDER
I.A No. 2/2025
IN
O.S No. 36/2024
D.D: 07.08.2025
SUB COURT,
MADURANTAKAM