

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

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

**Tuesday, this 26th day of August 2025
I.A.No. 2/2024
in
M.C.O.P No. 23/2023
(CNR No. TNCG13000728-2019)**

1. Viswanathan
2. Viji

...Petitioners/Respondents

..Vs..

Balasundram

...Respondent/Petitioner

This petition coming up for final hearing on 04.08.2025 in the presence of M/s.D.G. Manikandan, K.Tamizh Arasu and R.K. Saraswathi Santhosh Yadav, counsels for the petitioners/respondents and Mr.C.Venkatesan, counsel for respondent/petitioner, after hearing the arguments on both sides and upon perusing the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the 1st petitioner under Or IX Rule 13 of Civil Procedure Code to set aside the exparte decree dated 11.11.2024.

2. Averments of the petitioner:

An exparte decree was passed as against petitioners on 11.11.2024 due to non filing of counter. Bundle mixed up with his advocate office with

other records. Hence his counsel has not contacted the petitioner and filed a counter in time. Now only the above case bundle was traced out in his advocate office and now only he came to know that the ex parte decree was passed as against them. The petitioners also filed their counter along with this application. Petitioners have good case on merits. Hence the petitioner files this petition to set aside the ex parte decree dated 11.11.2024.

3. Counter of the Respondent in brief:

The respondent denies the allegations set out in the affidavit. There is no bonafide reason mentioned in the petition. The reason given for non-filing counter is very vague and not believable one. Absolutely there is no merits in the petition. Hence this petition is liable to be dismissed with cost.

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

6. Point:

“Whether this application can be allowed?”

The petition has been filed by the petitioners under Order IX Rule 13 CPC to set aside the ex parte order dated 11.11.2024 passed against them.

The case of the petitioner is that due to inadvertence and mixing up of his case bundle in the office of his counsel, the counter could not be filed in time, which resulted in an ex parte decree being passed. Hence this petition.

On the other hand, the respondent has strongly opposed the petition contending that the reasons put forth by the petitioner are vague, concocted, and not bona fide. Hence he seeks for dismissal.

Petitioners throw allegations against the counsel as such he alone lost the bundle and didn't inform them. At the outset the petitioners cannot throw allegations against the counsel and it is for the petitioners to follow the case. Apart from that, if really the bundle was lost the petitioners can very well obtain copies of the case from the court. So, the alleged reason set out by the petitioner is nothing but cooked up for the case.

Next it is pertinent to note that the petitioners entered appearance through their counsel in the main petition on 02.06.2023. In spite of getting adjournments to 20.06.2023, 07.07.2023, 31.07.2023 and 11.08.2023, the petitioners didn't file their counter in the main petition. Thereafter also the respondent waited for medical board certificate and finally exparte order was passed on 11.11.2024, i.e after one year from the date of exparte order passed against the petitioners for non filing counter. Having noticed the exparte order passed on 11.11.2024, the petitioners came up with this application on 25.11.2024. This show the lethargic attitude of the petitioners in proceeding the case.

Anyhow it is pertinent to note that the petitioners have filed their counter along with this application. Apart from that there is no loss or prejudice will be caused to the respondent if the main petition decided on merits. But for the lethargic attitude and to speed up the trial process and also in the interest of justice this court inclined to allow this application on certain conditions.

7]] Result:

In the result this application is allowed on conditions that,

(i) the petitioners shall pay a sum of Rs. 3,000.00 (Rupees Three Thousand) only as cost to the respondent on or before 08.09.2025,

ii) that the petitioner shall deposit a sum of Rs.1,00,000.00 (Rupees One Lakh) only into the court on or before 08.09.2025 by way of E-transfer to the credit of the main petition,

iii) that upon deposit of the said amount of Rs. 1,00,000.00, the registry shall in turn deposit the same into any nationalised bank in the credit of this main petition till passing of award and

iv) if the award passed in favour of the respondent/petitioner, then he was entitled to the same with interest, as otherwise the petitioners/respondents entitled for the same.

If the petitioners fail to comply the above said conditions, then this application automatically stands dismissed. Call on 09.09.2025.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 26th day of August 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
M.C.O.P No. 23/2023
D.O.D: 26.08.2025
SUB COURT,
MADURANTAKAM