

**IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM**

**PRESENT:** Tmt. V.Devapriya, B.Sc., M.L.,  
District Munsif, Madurantakam  
Friday, the 22<sup>nd</sup> day of November, 2024

I.A.No.4/2024

in

O.S.No.113/2023

1. Baskaran
2. Chandirababu
3. Kavitha

...Petitioners/Defendants

**-Vs-**

Vijayakumari

...Respondent/Plaintiff

This petition coming up before me on 07.11.2024 for final hearing in the presence of, Thiru.K.Chandiran, counsel for Petitioners/Defendants, and Thiru.Srinivasan, counsel for the Respondent/Plaintiff and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

**ORDER**

This petition has been filed by the Petitioners/Defendants under Order IX Rule 7 of Code of Civil Procedure, to set aside the exparte order passed against Petitioners/Defendants on 22.04.2024.

**2.The averments stated in the petition in brief :**

The Petitioners 2 and 3/Defendants 2 and 3 had purchased the suit property from the 1<sup>st</sup> Petitioner/ 1<sup>st</sup> Defendant. Therefore, the 1<sup>st</sup> Petitioner/ 1<sup>st</sup> Defendant alone

is looking after the above suit. The above suit was posted on 22.04.2024 for filing written statement. On that day, the 1<sup>st</sup> Petitioner/1<sup>st</sup> Defendant fell ill and therefore he could not move out of his house and he was taking native treatment. Therefore, he could not come to court and give instruction to his counsel for filing written statement. Therefore, the Petitioners/Defendants were set exparte in the above suit on 22.04.2024. The 1<sup>st</sup> Petitioner/ 1<sup>st</sup> Defendant came to know of the said order only last week. Hence the petition.

**3. The averments stated in the counter filed by the Respondent/Plaintiff, in brief:**

The Petitioners/Defendants had alleged illness on 22.04.2024. But they had not produced any medical records or doctor's certificate in support of his reason. The Petitioners/Defendants had vaguely stated the reason without any evidence to substantiate the same. This court is not bound to accept such vague and unsubstantiated reasons. The Petitioners/Defendants had stated only the illness of 1<sup>st</sup> Respondent/ 1<sup>st</sup> Defendant. However, there are other two Defendants in the above suit and there is no explanation as to why they had not appeared before this court.

4. The negligence on the part of Petitioners/Defendants cannot be excused. The reason stated by the Petitioners/Defendants is not sufficient. The Petitioners/Defendants are fully aware of the proceedings and inspite of the same, they had ignored to contest the case. This petition is filed only to drag the proceedings. There is no explanation for the delay. The law helps only those who are vigilant and not to those who sleep over their rights.

5. The Respondent/Plaintiff had diligently pursued the above suit and therefore allowing this application will cause prejudice to the Respondent/Plaintiff. The Petitioners/Defendants had not stated sufficient reason and hence this petition is liable to be dismissed.

6. The point for determination is whether this petition is to be allowed or not?

7. No exhibits were marked and no witnesses were examined on both sides.

8. Heard both sides and perused the records.

9. The Petitioners/Defendants had filed this petition to set aside the order dated 22.04.2024 setting them *ex parte* in the above suit, on the ground of illness. The Respondent/Plaintiff had resisted the petition stating that the Petitioners/Defendants had not stated sufficient reason and had filed this petition belatedly.

8. The Petitioners/Defendants had filed their written statement along with this petition. The reason stated by the Petitioners/Defendants is sufficient. The Respondent/Plaintiff had filed the above suit for specific performance and therefore, this court is of the opinion that a fair opportunity has to be given to the Petitioners/Defendants to conduct the above suit. Hence, in the interest of justice and for complete adjudication and to avoid multiplicity of proceedings, this court is inclined to allow this petition on costs.

**10.** In the result, this petition is allowed on costs of Rs.500/- to be paid by the Petitioners/Defendants to Respondent/Plaintiff on or before 29.11.2024, failing which this petition will be automatically dismissed. Call on 29.11.2024.

Dictated to the stenographer and typed by her and corrected and pronounced by me in open court on this the 22<sup>nd</sup> day of November, 2024

District Munsif  
Madurantakam

**Petitioner side witnesses and documents:**

**Nil**

**Respondents side witnesses and documents:**

**Nil**

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Madurantakam