

IN THE II ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Tmt.S.Tasneem, M.L.,

II Additional Judge

City Civil Court, Chennai

Wednesday the 28th day of August, 2024

I.A.No. 4 of 2024

in

O.S.No.5283 of 2023

CNR No.TNCH01-033144-2023

S.Muthuganesh, S/o. Sankarapandian, Residing at No.24A, Sammanthar Street,
Tirunelveli Town, Pincode-627006.Petitioner/2nd defendant

//Vs//

1.P.Venkateswaran, S/o. Palanisamy, residing at No.15, J Parvathipuram Muthureddy
Street, Parvathipuram, Vadalur, Cuddalore District 607 303.

....1st Respondent/Plaintiff

2.S.Vinoth, S/o. Sankarapandian, Residing at No.24A, Sammanthar Street,
Tirunelveli Town, Pincode-627006.

3.M.Saravanan, S/o. Murugan, Residing at No.7, Amaravathi Nagar, Palaiya Pettai,
Sarathapuram North Street, Pettai, Thirunelveli

4.P.Jeganathan, S/o.Poolpandi, residing at No.18A, Puliyanthoppu North Street,
Meenakshipuram, Tirunelveli-627859.

....Respondents 2 to 4/ defendants 1, 3 & 4

This petition came up on 29.07.2024 for final hearing before this Court in the
presence of M/s.P.Manojkumar, Vasantha Kumar and S.Suganrajan, Counsels for
petitioner/2nd defendant , and M/s. N.Sivakumar, Counsel for 1st respondent/plaintiff
and M/s.C.Vigneswaran, T.Srivadivu, Counsels for the 2nd Respondent/1st defendant
and M/s. J.Povas, M.Muthuseran and E.Venmani, Counsels for 3rd respondent/3rd
defendant, and M/s. N.Sivaprakash, N.Manikandan, K.Sudha and
K.Su.Kunjambikai, Counsel for 4th respondent/4th defendant and upon perusing the

petition, and connected records and upon hearing arguments of both sides this court delivered the following:

ORDER

This petition filed by the petitioner under Order IX Rule 7 of CPC to set aside the exparte order passed in O.S.No. 5283/2023 against the petitioner/2nd defendant dated 15.02.2024.

2.The averments in the affidavit filed in support of the petition in short as follows:-

The petitioner is the 2nd defendnat in the suit. The above suit had been filed by the 1st respondent/plaintiff for recovery of money by directing the defendants jointly and severally, to pay to 1st respondent/1st plaintiff the sum of Rs.6,50,000/- being the margin money/part consideration paid by the 1st respondent/plaintiff to purchase the car bearing registration certificate No. TN22 DC 5200 (Under Motor Vehicles Act) with pre suit interest of Rs.2,77,906/- from 14.09.2020 to 08.08.2023 @ 14.75% totaling Rs.9,27,906/- and with future interest on Rs.6,50,000/- @ 14.75% per annum from the date of the suit to the date of realization and for other reliefs. This court grant time till 15.02.2024 for filing the written statement. The petitioner was held up due to his official commitments and he was not in a position to contact his counsel and give instructions to his counsel for preparing the written statement. The non filing of the written statement is neither wilful nor wanton but due to the facts stated above. The petitioner/2nd defendant counsel requested this Hon'ble

Court to grant time for filing the written statement representing the same and this Hon'ble Court was pleased to set him exparte for non filing of the written statement on 15.02.2024. This petitioner have also filed his written statement along with the setaside petition. He prayed to setaside the exparte order dated 15.02.2024.

3.The counter filed by the 1st respondent/Plaintiff in short as follows:-

Petitioner had filed the said petition stating the reason for not filing written statement on 15.02.2024 and from 15.02.2024 to 12.03.2024 and prayed to Hon'ble Court to take the written statement on record, though the petition was filed under order IX Rule 7 CPC and prayer was made to set aside the exparte order against petitioner/2nd defendant. The respondent stated that the Petitioner's written statement shall be rejected for the following reasons:

Petitioner had not stated reason for not filing written statement for more than 121 days (from the date of suit notice and till 13.03.2024). The delay was not explained hence, the delay in filing written statement till 15.02.2024 cannot be condoned and hence, the written statement shall not be taken on record and thus to be rejected. The reason stated in this petition, and, in the petition filed for extension of time and got dismissal on 15.02.2024 are one and the same old reason cannot be put forth again in this petition. The petitioner saying that he had not given and his counsel had not taken instructions to prepare written statement till/ one or two days before 13.03.2024, for more than 120 days of receipt of suit notice or filing vakalath or entering appearance and thus, petitioner and his counsel was in gross negligence,

severe laxity in responding to the proceedings of the court. The above suit is a simple suit for money and injunction with fewer and simple facts and involving fewer documents. Petitioner's written statement contains only a bare and simple denial of all facts pleaded in plaint. Written statement contains no pleading of new or additional facts. It contains no reference to any document. Further, written statement could be filed in e-filing portal also. Petitioner and his counsel need not to travel to another's place and to meet personally for preparing and filing written statement. Similarly, counsel of the petitioner not even cared to take instructions from petitioner to prepare and file written statement on that day, petitioner made exparte despite the matter was kept pending till the end of the court hours. As already said, the written statement contains nothing but simple and bare denial of plaint facts and runs to few pages and such written statement shall be prepared within a hour.

The petition filed by petitioner is compared with the petition filed by the other respondents, it will be clear that all the defendants and their counsel were in close contact and working together and they are nothing but the cut, copy and paste of one's by another. Therefore, they are colluding together to unnecessarily drag the trial and disposal of the suit. The petition has no merit either under law (legislative and court made law) and under facts and the same is not maintainable. The petition is defective for not praying to condone delay in filing written statement and to take the written statement on record. Hence dismiss the petition.

4.Points for consideration:-

Whether the exparte order passed against the petitioner/2nd defendant on 15.02.2024 is to be set-aside or not?

5.POINT:-

5.1.This is an application filed by the petitioner/2nd defendant under Order IX Rule 7 of CPC to Setaside the exparte order passed against him on 15.02.2024.

5.2.The petitioner submitted that this Hon'ble Court was pleased to grant time for filing written statement till 15.02.2024. Before the hearing date, he was held up with his official commitments and he was unable to give instructions to his counsel for preparing written statement. After that he contacted his counsel and on verification it was found that the petitioner herein had been set exparte on 15.02.2024 for non filing of written statement. Now he is filing written statement along with setaside petition. Hence he prayed setaside the exparte order dated 15.02.2024 passed against him

5.3.Per contra, the counsel for the respondent/plaintiff would contend that the petitioner had not filed written statement for more than 121 days from the date of suit notice. According to him the petitioner has not stated explained the delay nor stated reason for non filing of written statement. Petitioner's written statement contains only a bare and simple denial of all facts pleaded in plaint. Written statement contains no pleading of new or additional facts. It contains no reference to any document. The

defendants were colluding together to unnecessarily drag the trial and disposal of the suit. There is no reason adduced for the absence of petitioner's counsel or for no representation when the suit was called on 15.02.2024 at the end of court hours. Hence he prayed to dismiss the petition. In support of his contention he relied upon the following judgments:-

- 1.All India Reporter Ltd. And Anr. Vs. Ramchandra Dhondo Datar on 30.09.1959. Bombay High Court*
- 2.Desh Raj Vs. Balkishan (D) through Proposed Lt Ms. On 20.01.2020 in Supreme Court of India*
- 3.Kailash Vs. Nanhku and others on 06.04.2005 Supreme Court of India*
- 4.M/s. Emami Ltd Vs. Athreya Incorporations on 13.08.2012 in Madras High Court.*
- 5. Mohammed Yusuf Vs Faij Mohammad and ors on 02.12.2008 in Supreme Court of India.*
- 6.Ponnammal Vs Subburaman on 08.08.2003, in Madras High Court.*
- 7.Sardar Vallabhbhai Patel Smarak Trust Vs. Samarth Nangia on 07.02.2011, High Court, New Delhi*
- 8.Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya on 22.03.1955, Supreme Court of India*
- 9.Union of India and others Vs.Shanthi Gurung and Ors, on 05.03.2014, High Court, New Delhi*
- 10.Akttaryar Khan Vs. Azahar Yar Khan on 14.05.1993, Allahabad High Court*

5.4.On perusal of the material parts of the record it is seen that on 15.02.2024 since the written statement was not filed by the petitioner an exparte order was passed against him. Now he filed the written statement along with the setaside petition. Admittedly, it is the bounden duty of the petitioner herein to be more vigilant of the case proceedings, especially when he filed any petition against the respondent. The

respondent had contended that the reasons mentioned for non appearance on 15.02.2024 is not a bonafide one and the petitioner is wantonly dragging on the suit.

5.5. In this regard this court finds it appropriate to refer to the decision of our Hon'ble Supreme court rendered in **2013(1) CTC 38** as follows:-

24. In an application under Order 9 Rule 7 of CPC court has to see the only points for consideration (which) are

- (i) Whether there was due service of summons:
- (ii) Whether there was good cause for previous non appearance at hearing.

Overriding consideration being rendering substantial justice. Expression “good cause” in Order 9 Rule 7 of CPC or “Sufficient cause” in order 9 Rule 13 of CPC have to receive liberal construction so as to advance substantial justice.

5.6. Following the above said case law, this court finds the reason stated in the affidavit of the petitioner filed in support of the petition is convincing and sufficient to set aside the ex parte order passed on 15.02.2024 against the petitioner in order to give a quietus to the issues involved. Moreover only if the written statement is filed, the issues involved in the case can be brought on light and the trial can be commenced and a just decision can be arrived on merits.

5.7. In the light of the above discussions, considering the submissions made on both sides, this court is of the view that in the interest of justice and in order to give an opportunity to the petitioner to contest the case on merits and also taking note of

the nature of suit and submissions made on the side of the petitioner, this petition is allowed. However, sufficient opportunity was given to the petitioner, this Court deems it fit that the petitioner must be adequately paid costs for the same.

In the result, the petition is allowed on payment of cost of Rs.2,000/- to be paid to the Chief Justice Relief Fund, High Court, Madras on or before 04.09.2024. Otherwise, the petition shall stands dismissed. Call on 05.09.2024.

Directly dictated to the stenographer, computerized by her, corrected and pronounced by me in the open Court, this the 28th day of August 2024.

II Additional Judge.
City Civil Court, Chennai.

List of Witness and Exhibits on both side: Nil

II Additional Judge.
City Civil Court, Chennai.

Draft / Fair : Order
I.A.No.4/2024 in
O.S.No.5283 of 2023
Dated: 28.08.2024
II Additional City Civil
Court, Chennai.