

IN THE II ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Tmt.K. Geetha Rani, M.A., M.L.,

III Additional Judge

(FAC) II Additional City Civil Court, Chennai

Friday the 19th day of September 2025

I.A.No.,3 of 2025

in

O.S.No.5684 of 2024

CNR No.TNCH01-038766-2024

- 1.V.Prasanthi, W/o. Late V.Prabakar, No. 32/4, Vasudevapuram, Triplicane, Chennai-600 005.
 2. Ms.Dhanalakshmi, D/o. Late V.Prabakar, No. 32/4, Vasudevapuram, Triplicane, Chennai-600 005.
 - 3.Ms.Pavithra, D/o. Late V.Prabakar, No. 32/4, Vasudevapuram, Triplicane, Chennai-600 005.
 - 4.Mr.Balaji, S/o. Late V.Prabakar, No. 32/4, Vasudevapuram, Triplicane, Chennai-600 005.
-Petitioners/defendants

/versus/

Mr.V.K.Seenivasulu, S/o. Late V.Ramanaiah, No. 18/68, Sundaramoorthy Vinayagar Koil Street, Triplicane, Chennai-600 005.

.....Respondent/Plaintiff

This petition having come up on 04.09.2025 for hearing before me in the presence of M/s.NA.Malaisaravanan, K.Thirumavalavan and R.Divya Gracy Counsel for petitioners/defendants and M/s.K.Chandrasekaran, G.Bhuvaneshwari E.Damodaran and S.Ravichandran, Counsels for the respondent/plaintiff and after perusing the records, and after hearing arguments of both sides having stood over for consideration till this day, this Court delivered the following:

ORDER

This petition is filed by the petitioner/defendant under XXXVII Rule 4 of CPC to set aside the ex parte decree passed against the petitioners in O.S.No. 5684 of 2024 dated 02.12.2024.

2. Brief averments of the petition as follows:-

The 1st petitioner is the 1st defendant in the main suit and as such well aware of the facts of the case and she is filing this petition on behalf of the 2 to 4 petitioners also. The petitioner further submitted that the respondent herein filed the above suit against me and other petitioners for the alleged claim of Rs.13,24,400/- under Order XXXVII Rule 1 and 2 CPC based on the alleged pro notes. In which we have entered appearance and summons to judgment also served to the respondent. On 29.11.2024 for filing petition to grant leave to defend the suit. On 29.11.2024 after finishing the works in the High Court, my counsel came to this Hon'ble Court to get time for filing petition to grant leave to defend the suit. But it was notice that the matter was adjourned on 02.12.2024. He was under the impression that the leave has been granted to file a petition. But after that he came to know that they have been set aside and the petition is posted for judgment. If the order of the ex parte is not set aside the petitioner will be put in to huge loss and hardship but no prejudice will be caused to the respondent herein to show our bonafide and along with this petition grant leave to defend in the main suit has been filed. Hence the petition may be allowed.

3. The averments in the counter affidavit filed by the respondent as follows:

Whereas the respondent has stated that the petitioner does not have a locostandi to file the petition. Because knowing well he has set the matter as exparte and apart from that he have not filed any security. The property which has been filed to attach in this case under order XXXVII has been sold by the petitioner. Apart from that when the court has directed to furnish security the petitioner/defendant after taking that if they produce security they have been allowed to contest the matter. Such a situation they will not continue abuse the process of law that the other proceeding can be conducted in a fair and just manner. Hence the petition may be dismissed.

4. The point for consideration:-

1. Whether the petition is to be allowed or not?

5. POINT :

Heard both sides. The original suit in O.S.No. 5684/2024 is filed under XXXVII Rule 1 and 2 of CPC. After serving summons to the defendant the defendant has appeared. Summons for judgment has given. After receiving the summons for judgment within 10 days they have to file a petition to defend the suit if they have not filed any petition to defend the suit automatically the suit will be decided and further orders will be passed. In such a situation only summons for judgment has given the petitioner/ defendant has not appeared before the court and they have not file any petition seeking leave to defend the suit . On that score only they have been

set exparte. Now along with the petition has stated by the petitioner he has filed a petition i.e., leave to defend petition also filed along with this petition. The same was also numbered as I.A.No. 4/25. Even before setting aside the exparte order the petition ie leave to defend the suit petitione has been filed and numbered.Hence no other go this petition has to be allowed.

In the result this petition is allowed. No costs.

Dictated directly to the Steno-typist, computerized by her, corrected and pronounced by me in the open court, this the 19th day of September 2025.

III Additional Judge
(FAC) II Additional City Civil Court
Chennai

II Additional City
Civil Court, Chennai.
Draft/Fair Order
in
I.A.No.,3 of 2025
in
O.S.No.5684 of 2024
Dated 19.09.2025