

IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE

NO.01, KODAIKANAL, DINDIGUL DISTRICT

Present: Thiru. R. ARUN PANDIAN B.A.,B.L.,(Hons). M.L.,
District Munsif cum Judicial Magistrate No.01, Kodaikanal

Tuesday, the 15th day of July, 2025.

I.A.No.01 of 2024

In

O.S.No.40 of 2013

(CNR.No.TNDG11-000065-2013)

1. Santha satheesh

2. Sai Geethanjali

...Petitioners/Defendants

/versus/

Ramsingh

... Respondent/Plaintiff

This petition is heard in the presence of Mr.V.Manoharan,, the Learned counsel for the Petitioners/Defendants and Mr.A.V.Arumuga Ram, the Learned counsel for the Respondent/Plaintiff. Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

ORDER

This petition is filed by virtue of order 9 rule 13 of CPC seeking relief to set aside the ex prate order passed in OS 40 of 2013. The Petitioner's are defendant in the main suit and the Respondent is the plaintiff in the main suit respectively. For the sake of convenience, the parties are referred to as their status in the present petition.

2. The time line of the main suit is that, the suit OS 40 of 2013 was filed in the year 2013 praying relief of declaration that the Document No. 1355/2012 dated 13.06.2012 is null and void. The petitioners herein made appearance in the main suit, and filed the written statement on 18.03.2016. The respondent was examined in chief as PW1 on 21.06.2017 and was partly cross examined on 27.07.2017. For default of the petitioner herein, the cross examination of PW1 was closed on 14.09.2017. After affording opportunity to the respondent, the respondent side evidence was closed on 24.11.2017. Following which the case was adjourned for the evidence behest the petitioner in the main suit, pending which the petitioner herein filed an application for recall of the respondent and further to complete the cross examination which was earlier closed by this court. The said application was allowed and the respondent herein was cross examined on 07.08.2019. Subsequent which the suit was dragged in the stage for defence evidence from 04.09.2019 to 04.03.2021 by the petitioner herein. As there was no representation behest the petitioner in the main suit on 04.03.2021 the petitioner herein was set ex parte in the main suit and court proceeded for the stage of arguments. Following which the petitioner herein again filed an application to set aside the order to proceed ex parte passed against the petitioner which was numbered as IA 92/2021. In the proceedings of said IA 92/2021 the petitioner having defaulted in appearance the same was also dismissed for default, and judgement was delivered by this court on 14.03.2024 in the main suit. To set aside the same the present IA 01/2024 stands filed and is considered.

3. The grounds on which the application for set-aside the ex parte decree is that, the petitioner was prevented by a sufficient cause, that is the counsel Mr.S.Sheikdawood who was representing the petitioner passed away

on 03.01.2022. and this fact was not within the knowledge of the petitioner at the relevant time. Consequently, the suit was dismissed for default, which was neither deliberate nor due to any wanton act on the part of the petitioner. The imposition of covid lockdown was additionally relied upon as ground for the passing of ex parte order.

4. The Respondents being put on notice filed a counter placing that, the assertion that the petitioner being not aware as to the demise of their counsel at the material time period is not true. The contention placed by the respondent is that, the cause of default cannot be placed blame wholly on the advocate who represented him, it was asserted that it is the duty of the litigants concerned to follow their case. The respondents raised the contention that, since the witness PW1 was dully cross examined by petitioners herein the judgement being passed, the decree cannot be categorised as an ex parte decree. It was accounted that the judgements were passed on merits. Thus prayed the interlocutory application IA 01 of 2024 be dismissed.

5. The point which arises for consideration is, whether the ex parte decree be set aside?

6. The code provides a ground for setting aside ex parte decree when the petitioner was prevented by any sufficient cause from appearing when the suit was called out for hearing. The term sufficient cause is not defined anywhere in the code. The demise of the counsel on record, of which the party was unaware, was pleaded as the ground for not appearing before the court. The contention that the decree being not an ex parte decree, fails to sustain on the ground that the defence evidence in the main suit was not concluded in the presence of defendant counsel. It stands exhumed that the court has not

proceeded under order 17 rule 3 of the code, in deciding the application IA 92 of 2021 and the main suit OS 40 of 2013. In considering whether the demise of counsel on record, and as a consequence there being a lack of representation can be sufficient cause. This court relies on the judgment laid by the Apex court in the case Shamdasani Vs Central Bank of India AIR 1959 SC 59, wherein it stands exhumed that the word “sufficient cause” must be liberally construed to enable the court to exercise powers of ex debito justitiae. At the same time, the fact that the main case has been dragged on by the petitioner herein for over 10 years, with frequent defaults at every stage attributable to the petitioner, cannot be overlooked. Hence for the reason placed, this application to set aside the ex parte decree in the main suit, restoration of IA 92 of 2021 is allowed, subject to payment of cost Rs 10,000/- to the respondent on or before 01.08.2025, failing which this application shall stand dismissed without any further reference to this court.

In result, the petition is allowed subject to compliance of the condition as to cost.

Dictated to the steno directly to the office computer and typed by him and corrected by me on the day of 15th July 2025

**District Munsif Cum
Judicial Magistrate No.01,
Kodaikanal.**

Plaintiff side Witnesses: Nil

Plaintiff side documents:

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| Ex.A1 | 12.10.2017 | O.S.No.40/2013 Vakalath | Certified copy |
| Ex.A2 | 20.01.2022 | Death Certificate | Certified Copy |

Defendants side witnesses and documents – Nil.

**District Munsif cum Judicial Magistrate No.I,
Kodaikanal.**