



**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 10<sup>th</sup> day of June, 2025.

**I.A.No.03 of 2025**

**In**

**O.S.No.109 of 2012**

**(CNR.No.TNDG110001752012)**

Banuthaiammal and 4 others

...Petitioners/Defendants

/versus/

Paulraj and one another

... Respondents/Plaintiffs

This petition is heard in the presence of Mr.Ashik ahamed, B.Com., B.L., the Learned counsel for the Petitioners/Defendants and Mr.R.Muthkumaran., B.A., B.L., the Learned counsel for the Respondents/Plaintiffs. Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

**ORDER**

This Petition filed by the Petitioner under Order 9 Rule 13 of the Code of Civil Procedure (In short, 'the Code') to set aside the Order to proceed ex parte against the petitioner/ defendants dt. 27.03.2025 in O.S. 109/12. Though the petitioner has invoked O9 R13 of CPC, the suit 109 of 2012 having been not concluded with an ex parte decree, the rule O9 R7 is what required to be followed by the petitioner.

Quoting an incorrect legal provision in an application does not automatically invalidate the claim. This court looks in to the substance of the claim and the relief sought.

2. The Petitioner is the 5<sup>th</sup> Defendant and the Respondent's are 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. Gist of the Petition would run thus:**

The Petitioners owing to the inability to communicate with the counsel, the petitioner remained unaware of the suit proceeding, hence they could not appear before the court on 27.03.2025 which resulted in the exparte order and hence the petition.

3. The respondents being put on notice, the counsel for the respondent made endorsement as to no counter.

4. Paramount duty cast upon this Court is to decide as to whether the petition is liable to be allowed or not.

5. Heard both the sides. Perused the entire records.

6. This petition has been filed to set aside the order to proceed exparte against the petitioners/defendants in the main suit, for default caused on 27.03.2025. The diary proceedings of the suit OS 109 of 2012 stands endorsed as follows “ **PW1 present defendants called absent, no rep, already sufficient time given for cross of PW1, the suit is pending from the year 2012, hence cross of PW1 is closed, defendant is set exparte, for further PW's**”. The petitioner by virtue of this petition wants the court to go back on what has been done on 27.03.2025. Considering the fact that in order to give an opportunity to the petitioner and in

order to enable the court to decide the case on merits and thereby bring finality to litigation and thereby avoid multiplicity of proceedings and to facilitate further progress of the case, this court feels it just and necessary to allow this application

**In fine, the petition will be allowed on the following conditions:**

(a) That the petitioner shall pay Rs.1000/- (Rupees one thousand only) as cost for the delay caused to the Respondent on or before the next hearing date, i.e. on or before 30.06.2025. On default the IA 03 of 2025 stands dismissed.

Dictated to the steno directly to the office computer and typed by him and corrected by me on the day of 10<sup>th</sup> June 2025

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

**Both side witnesses and documents: Nil**

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