

**IN THE COURT OF THE SUBORDINATE JUDGE, SATHYAMANGALAM.**

**PRESENT: Tmt.K.S.Shabeena, B.A., B.L.**  
Subordinate Judge, Sathyamangalam.

Saturday, the 01<sup>st</sup> day of November 2025  
(2056 Thiruvalluvarandu Visuvavasvu varudam Ayyappasi Thingal 15<sup>th</sup> day)

**I.A.No.3/2025**

**in**

**OS.No.370 of 2023**

Shahnaz Memorials  
Sole proprietorship,  
Proprietor Aleejiba Fathima

.... Petitioner/Defendant

Vs

S.K.Abdul Aleem Saheb Sons,  
Aleem Beedi Company,  
Rep by its Managing Director  
Zubeirullah Abdul Aleem Saheb,  
Rep by its Power Agent Nallasamy

..... Respondent/Plaintiff

This petition was came up for final hearing before me on 01.11.2025 in the presence of Thiru.V.Prasath, Advocate for the Petitioner and Thiru.B.Muralidharan, Advocate for the Respondents and upon perusing the entire case records, on hearing the arguments of both sides, and having stood over for consideration till this date, this court delivered the following:

**ORDER**

Petition filed under under Order IX Rule 7 of the Code of Civil Procedure, praying to Set aside Exparte.

## **2. Gist of the Petition:**

The petitioner, who is the defendant in the suit for recovery of money, has filed the present application under Order IX Rule 7 of the Code of Civil Procedure seeking to set aside the ex parte order dated 11.03.2025. He states that the case had been posted on that date for his appearance. According to him, he had been suffering from severe viral fever for nearly one month prior to the hearing, during which period he had been confined to bed and was unable to move about or communicate with his counsel. He claims that owing to this illness he could not appear before the Court or instruct his counsel to file a vakalatnama. He asserts that he recovered only recently, and upon contacting his counsel thereafter he came to know that the case had been taken up and proceeded ex parte on 11.03.2025 due to his absence. On these grounds, he seeks that the ex parte order be recalled and that he be permitted to participate in the suit.

## **3. Gist of the Counter Statement :**

**3.1.** The respondent opposes the application contending that the summons were duly served on the petitioner and that he was granted sufficient time to appear and file his written statement. It is alleged that the petitioner willfully remained absent and failed to file the written statement within the statutory period prescribed under Article 8 Rule 1 of the Civil Rules of Practice. The explanation of viral fever, according to the respondent, is vague and unsupported by any medical certificate or treatment record, and thus does not constitute sufficient cause as required under Order IX Rule

7 CPC.

3.2. More significantly, the respondent points out that, instead of appearing in this Court after receipt of summons, the petitioner instituted a separate suit on the very same cause of action before the Civil Judge, Class-I, Bilaspur, Chhattisgarh, in Civil Suit No. 1 of 2025, branding the respondent's suit as fraudulent. This conduct, according to the respondent, shows that the petitioner was fully aware of the proceedings here and deliberately avoided participation, thereby abusing the process of law. The filing of a parallel suit is described as forum shopping and suppression of material facts. The respondent further states that the petitioner has not filed his written statement along with the present application, which, as per settled legal principles, is necessary to demonstrate bona fides. For these reasons, dismissal of the application is sought.

#### **4. Discussion:**

4.1. This Court has considered the rival submissions and the materials placed on record. The petitioner invokes the discretionary jurisdiction of this Court under Order IX Rule 7 CPC to set aside the ex parte order dated 11.03.2025. Under this provision, a defendant who failed to appear when the suit was called for hearing must satisfy the Court that there existed sufficient cause preventing his appearance on that date. The burden to establish such cause rests squarely upon the petitioner.

4.2. The petitioner attributes his non-appearance to viral fever, asserting that he was bedridden for nearly one month prior to 11.03.2025. However, apart from this

bare assertion, no medical certificate, prescription, or treatment record has been furnished. Courts have consistently held that a vague plea of illness unsupported by medical evidence does not amount to sufficient cause. In the absence of any corroborating material, this Court is unable to accept the petitioner's explanation as credible.

4.3. The respondent's allegation that the petitioner deliberately avoided appearance gains significance when viewed alongside the fact that the petitioner, during the same period, instituted Civil Suit No. 1 of 2025 before the Civil Judge, Class-I, Bilaspur, on the very same cause of action. The filing of a separate suit in another jurisdiction, while simultaneously pleading incapacity to appear in the present matter, reveals that the petitioner was not only aware of the pendency of the present suit but was actively litigating elsewhere. This conduct is inconsistent with the assertion of being bedridden and unable to communicate. More importantly, initiating parallel proceedings amounts to forum shopping and undermines the petitioner's plea that his absence before this Court was involuntary.

4.4. Another aspect that weighs against the petitioner is his failure to file the written statement even along with the present application. It is a settled principle that an application under Order IX Rule 7 should ordinarily be accompanied by the written statement to demonstrate readiness and bona fides. The absence of such a written statement strengthens the inference that the petitioner has not approached the Court with genuine intent to contest the suit promptly.

4.5. On a cumulative assessment of these circumstances, this Court finds that the petitioner has not shown sufficient cause for his non-appearance on 11.03.2025. The explanation offered remains unsubstantiated and unconvincing. His conduct, particularly the initiation of parallel proceedings, indicates deliberate avoidance of participation in this suit. The requirements of Order IX Rule 7 are therefore not fulfilled, and no ground is made out for recalling the ex parte order.

**6. Result:**

In view of the aforesaid discussion, this Court finds no merit in the application. The petition filed under Order IX Rule 7 CPC to set aside the ex parte order dated 11.03.2025 is hereby dismissed. No costs.

Dictated by me to the Steno typist, typed by her in the Computer directly, corrected and pronounced by me in open court on this the 01<sup>st</sup> day of November 2025.

Subordinate Judge,  
Sathyamangalam.

**Petitioner's side witnesses and documents:** Nil

**Respondent's side witnesses documents:-** Nil

Subordinate Judge,  
Sathyamangalam.