

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif, Uthangarai**

On this Friday, the 26th day of April 2024

I.A.No. 07 of 2024 in I.A.No. 04 of 2024 in O.S.No. 06 of 2024

TNKI13-000014-2024

1. Janakiraman

2. Balaji

...Petitioners / Respondents / Defendants

/versus/

1. Thirumal

2. Elavarasan

3. Ashokan

4. Prasanth

5. Santhirasekar

6. Madheswaran

7. Munusami

8. Saravanan

9. Theerthagiri

10. Thirumal

11. Tamilarasan

12. Selvi

13. Kalaiselvi

14. Siva

15. Saravanan

16. Malar

17. Palani

18. Moorthi

19. Madhesh

20. Murugesan

21. Saamu

22. Rathinavel

...Respondents / Petitioners / Plaintiffs

This interlocutory application came up before this Court on 25.04.2024 for final hearing in the presence of advocate Thiru. N. Devendiran, the learned counsel for the petitioners and advocate Thiru. G. Vajjiravel, the learned counsel for the

respondent and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

ORDER

The application has been filed under Order IX Rule 7 of the Code of Civil Procedure, 1908 for setting aside the *ex parte* order dated 19.03.2024 passed against the petitioners / defendants in I.A.No. 04 of 2024.

The averments of the petitioners in brief:

1. The petitioners herein are the defendants and the respondents herein are the plaintiffs in the suit. The petitioners aver that the suit is filed by the respondents / plaintiffs for perpetual injunction. The petitioners aver that their two-wheeler broke down when they were ride to appear before the Court on 19.03.2024 and were unable to appear before the Court on time. The petitioners aver that an *ex parte* order was passed against the petitioners for their non-appearance when called. The petitioners aver that their absence on 19.03.2024 was neither wanton nor willful and was due to break down of two-wheeler when they were appearing before this Court and pray for allowing this application and set aside the *ex parte* order passed against the petitioners in the I.A.No. 04 of 2024 on 19.03.2024.

The averments of the respondents in brief:

2. The respondent deny the averments of the petitioners as false in toto and aver that the application has been filed only to prolong the suit and prejudice the respondent and seeks for dismissal of the application with cost.

Point for consideration:

3. Whether this application is liable to be allowed?

Evidence:

4. Neither of the parties to this application has adduced any oral or documentary evidence.

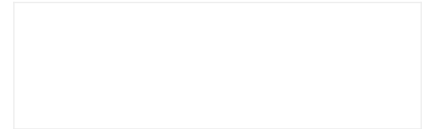
Discussion:

5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for perpetual injunction against the defendants. The petitioners who are the defendants in the suit have filed this application to set aside the *ex parte* order dated 19.03.2024 passed against the petitioners in the I.A.No. 04 of 2024. The reasons assigned by the petitioners are that while they were appearing before this Court, unexpectedly their two-wheeler has broken down, and they were unable to present before the Court on time. The respondents have resisted these averments as false. A perusal of the case proceedings would show that the petitioners were set *ex parte* on 19.03.2024 for their non-appearance when called upon at the first hearing. However, the Honourable Higher Courts, time and again, have insisted to adopt a liberal approach in condoning non-appearance rather than adopting a pedantic view when the delay is meager. This Court is also of considered view that fair and sufficient opportunities have to be given to all the parties for effective and conclusive determination of the disputes between the parties. Hence, this Court is inclined to allow this application without cost but on condition of filing counter since the stipulated time under Order VII Rule 1 of the Code of Civil Procedure, 1908 expired on 17.04.2024.

Result:

6. ***As a result, this application is allowed on condition that the petitioner shall file counter of I.A.No. 04 of 2024 on or before 30.04.2024, failing which the application stands dismissed.***

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 26th day of April 2024.



District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

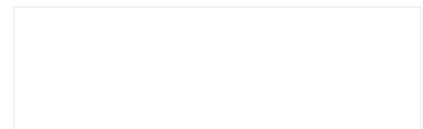
Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai