

**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 Thursday, the 21st day of July 2022

I.A.No. 01 of 2022 in O.S.No. 25 of 2021

TNKI13-000023-2021

1. Kalaiselvi
2. Venkatesan

....Petitioners / Defendants

/versus/

Rajendran

....Respondent / Plaintiff

This interlocutory application came up before this Court on 21.07.2022 for final hearing in the presence of advocate Thiru. M. Sakthivel, the learned counsel for petitioners and advocate Thiru. A. Arivusudar, the learned counsel for the respondent and upon hearing both sides and on perusal of records having stood over for consideration till date, this Court delivers the following:

ORDER

This application filed under Order IX Rule 7 of Code of Civil Procedure, 1908 by the petitioner/defendant to set aside the *ex parte* order passed against the petitioners.

1. ***The averments of the petitioner in brief:*** The petitioners herein are the 1st and 3rd defendants in the suit instituted against the petitioners by the respondent for relief of declaration of title, document as null and void and also for mandatory injunction. The petitioners aver that on 06.12.2021, the hearing was posted for appearance of the petitioners and due to sufferance of the 2nd petitioner from viral fever, the 2nd petitioner was unable to appear before this Court. The petitioners aver that since the 2nd petitioner was to conduct the case on behalf of 1st petitioner also, the 1st petitioner also did not appear and due to non-appearance an *ex parte* order was passed against

the petitioners. The non-appearance was neither willful nor wanton and prays for setting aside of the *ex parte* order passed against the petitioners.

2. ***The averments of the respondent in brief:*** The respondent admit that the hearing was posted for appearance of the petitioners and due to non-appearance of the petitioners, *ex parte* order was passed against them. However, the respondent objects to the application on the grounds that the averments of the petitioner's non-appearance was due to viral fever are complete false and objects that this application is filed only to prolong the proceedings and seeks for dismissal of the application.

3. ***Point for consideration:*** Whether this application is liable to be allowed?

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

Discussion:

5. Heard both parties and perused case records. Upon perusal of case records, it appears that the summons to the petitioners were duly served and they failed to appear on 06.12.2021 and due to their non-appearance, this Court ordered the suit to be heard *ex parte*. The reasons adduced by the petitioners for his non appearance is that the 2nd petitioner, who was also about to conduct the case on behalf of the 1st petitioner, was suffering from viral fever and the 2nd petitioner could not appear. The reasons in the affidavit are found satisfactory. This Court of opinion that the principles of natural justice warrant hearing of both sides before rendering any decision to a dispute for effective redressal and that the petitioners have to be given opportunities to the heard in the interest of justice and fair trial. Thus, this Court is of opinion that this application is one to be allowed.

6. ***In the result, the application stands allowed and the ex parte order dated 06.12.2021 upon conditions that:***

(a) cost of Rs.200/- to be paid by the petitioners to the respondent on or before 05.08.2022.

(b) the written statements of the petitioners in the suit to be filed on or before 05.08.2022.

Upon failing to comply with the above conditions, this application stands automatically dismissed. For compliance of condition call on 05.08.2022.

This order was dictated to the typed by me in computer, corrected by me and pronounced by me in open court on this 21st July 2022.

Sd/- XXXXXX

District Munsif
Uthangarai

Annexure

Petitioner side witnesses: Nil

Petitioner side exhibits: Nil

Respondent side witnesses: Nil

Respondent side exhibits: Nil

Sd/- XXXXXX

District Munsif
Uthangarai