

**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 Tuesday, the 2nd day of January 2024

**I.A.No. 04 of 2023 in O.S.No. 82 of 2022**

TNKI13-000085-2022

Raji Krishnan

...Petitioner / 5<sup>th</sup> Defendant

/versus/

Chinna Thambi @ Chinnasamy

...Respondent / Plaintiff

This interlocutory application came up before this Court on 20.12.2023 for final hearing in the presence of advocate Thiru. N.K. Murugan, the learned counsel for the petitioner and the respondent set *ex parte* for non-appearance and upon hearing petitioner side 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 29.08.2023 passed against the petitioner in the suit.

***The averments of the petitioner in brief:***

1. The petitioner herein is the 5<sup>th</sup> defendant in the suit filed by the respondent against the petitioner and other defendants for declaration of title and of a document as null and void and for perpetual injunction. The petitioner avers that the suit was posted for appearance of the petitioner and for filing vakalat on 29.08.2023, however, the petitioner was unable to appear due to illness and treatment under taken for it. The petitioner avers that the non-appearance is neither willful nor wanton and prays for allowing this application and to set aside the *ex parte* order dated 29.08.2023.

***The non-filing of counter by the respondent:***

2. Despite sufficient opportunities, the respondent did not file any counter and was set *ex parte* on 20.12.2023.

***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:***

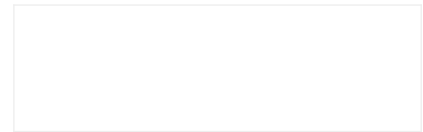
5. This Court, having considered the arguments advanced on the side of the petitioner and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for declaration of title of the respondent and a document as null and void and for perpetual injunction against the petitioner and other defendants. The petitioner herein is the 5<sup>th</sup> defendant who has filed this application to set aside the order of *ex parte* passed against the petitioner on 29.08.2023. A perusal of the case proceeding would show that the summonses to the petitioner was duly served and petitioner appeared on 21.06.2023 and has sought time to engage counsel, and upon request, the hearing was adjourned to 12.07.2023 and also to 08.08.2023. However, the petitioner neither appeared nor filed any written statement or vakalat on 29.08.2023 and was set *ex parte*. The petitioner has assigned reasons of illness for non-appearance. However, the petitioner has filed written statement along with this application showing *bonafide* interest in contesting the suit and this application has been filed before framing of issues and within a period of 1 month from the date of order of hearing the suit *ex parte*. The respondent / plaintiff has also not filed any counter and raised no objections. The

Honourable Higher Courts, in respect of condoning non-appearance reasoned by illness, have directed to adopt a liberal approach rather than a pedantic approach. Further, this Court is of considered view that all parties to the suit have to be given fair and sufficient opportunities to present their fullest case which the principles of natural justice warrant. Hence, this Court is inclined to allow this application without any cost.

***Result:***

6. ***As a result, this application is allowed. No cost.***

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 2nd day of January 2024.



District Munsif  
Uthangarai

**Annexure**

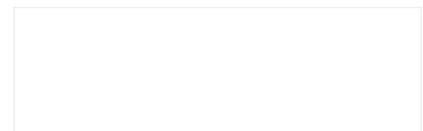
**Petitioner side evidence**

Petitioner side Witnesses & Exhibits: Nil

**Respondent side evidence**

Respondent side Witnesses & Exhibits: Nil

**Court Documents:** Nil



District Munsif  
Uthangarai