

In the Court of Principal District Judge, Kanyakumari District
at Nagercoil.

Present : Thiru B. Karthikeyan, B.L.,
Principal District Judge.

Wednesday the 30th day of April, 2025.

I.A. No. 5/2024 in O.S. No. 113/2021

1. Christy
2. Roselin Stella
3. Benny Kingston .. Petitioners/Defendants

/Vs./

Anto Navin .. Respondent/Plaintiff

This petition is coming on 10.02.2025 for final hearing before
me in the presence of ,

Thiru M.S. Moorthy - Advocate for the Petitioners

Thiru M. Timitilal - Advocate for the respondent

and upon hearing the arguments of both sides and upon perusing the
materials available on record and having stood over for consideration till
this day, this court delivered the following :

ORDER

This petition has been filed by the defendants seeking to set aside the ex parte order passed against them in the suit on 21.04.2022 claiming that the respondent filed a suit for declaration, permanent injunction and for other reliefs and on 21.04.2022 the suit is posted for written statement. It would be contended that the petitioners 1 and 2 are senior citizens and having several ailments and the 3rd petitioner is also working abroad and he used to visit native place twice in a year. So the petitioners are unable to travel to Nagercoil and meet their counsel every now and then and they are not in a position to obtain copies of documents and other related papers as demanded by their advocate. So they are unable to prepare the written statement within time granted by this court. Further it would be contended that, while so there was a dispute arose between the plaintiff and the petitioners and the police enquiry was also effected and during police enquiry, the plaintiff and his wife agreed to vacate from the plaint schedule property and the plaintiff also agreed and assured to withdraw the case. So the petitioners have not filed written statement and not follow up the court proceedings. So, due to non filing of written statement, the petitioners were set ex parte and ex parte order has been

passed against them on 21.04.2022. Further it would be contended that, subsequently, the plaintiff came to India and visited the plaint schedule property and again quarrelled with the petitioners. So the petitioners have filed a petition before the RDO Court, Nagercoil under the Protection of Senior Citizen Act. But the RDO, Nagercoil has directed the petitioners to seek remedy through the civil court in OS No.113/2021 and dismissed the petition. Hence, they have filed this petition along with written statement. The non filing of written statement is neither wilful nor wanton.

2. The respondent/plaintiff filed a counter statement, in and by which they would object by contending that the petitioners appeared before the court on 16.08.2021, besides that instead of giving three months time, swallowed eight months time to the defendants for filing written statement and finally set exparte on 21.04.2022. Further it would be contended that at no circumstances, the plaintiff agreed to withdraw the suit. As the defendants knowing fully well that they did not file written statement and set exparte on 21.04.2022. On 19.07.2023 the counsel for the defendants to file a petition to set aside the exparte order for that copy was served to the plaintiff. Thereafter, defendants travelled many illegal ways and disregard

to court process, finally again they filed second exparte set aside petition only on 10.07.2024 which is not maintainable.

3. Heard both. Perused the materials available on record.

4. **The Point for consideration that arises is :-**

(i) Whether the petition deserves to be allowed?

5. **Point No.(i):-**

A perusal of the records show that the petitioners/Defendants have been set exparte on 21.04.2022 for non filing of written statement. The claim of the petitioners is that due to the ailments of petitioners 1 and 2 and the 3rd petitioner is also working in abroad, they could not file written statement in time. The petitioners have filed written statement along with this petition. Though the respondent/plaintiff would contend that the reason stated by the petitioners is not acceptable one, it would be in the interest of everyone that the suit is disposed of on merits. The reason stated by the petitioners also appears believable and sufficient. There would be no prejudice, if the exparte order against the petitioners is set aside. Considering the nature of the suit and the fact that the petition has been filed

in time and written statement also filed by the petitioners along with this petition, this court is of the view that the present petition deserves to be allowed.

6. In the result, this petition is allowed on the condition that the petitioners pay a sum of Rs.1,000/- (Rupees One Thousand only) to the respondent through his counsel on or before 04.06.2025, failing which the petition shall stand dismissed. Call on 05.06.2025.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, this the 30th day of April, 2025.

Sd/-
Principal District Judge,
Kanniyakumari at Nagercoil.

Principal District Court,
Nagercoil.
Fair Order in
I.A. No.5/2024 in
O.S. No. 113/2021
Dt.: 30.04.2025