

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Tmt. M.Alima, B.A., L.L.M.,
II Additional District Munsif, Nagercoil.(FAC)

Thursday, on the 28th day of November, 2024.

I.A. No. 5 of 2024 in O.S. No. 26 of 2022

1. Dr. J. Subbiah

rep. by his power holder 2nd plaintiff

2. Rajaretnam

... Petitioners / Plaintiffs

-vs-

1. The Additional Chief Secretary to Government,
Municipal Administration,

2. State of Tamil Nadu, Rep by the District Collector.

3. The Nagercoil Municipal Corporation,
Rep. by its commissioner.

... Respondents / Defendants

This petition came before this court on 20.11.2024 for a final hearing in the presence of Mr. V. Kumaran Nair, Advocate for the Petitioners / Plaintiffs and Mr. A. Samuel Edwin Advocate for the 3rd Respondent/3rd Defendant and Government Pleader for the 1st and 2nd Respondents/1st and 2nd defendants, counter not filed, set exparte in the suit and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The Petitioner had filed under Order VII Rule 14 (3) and Section 151 of Code of Civil Procedure, seeking that the documents hereunder be kindly received and exhibited on the side of petitioners/plaintiffs and thus render justice.

1. Gist of Averments in the Petitioner Petitions :

The Petitioner is the 1st Plaintiff in this suit. Aggrieved by the illegal actions of the Nagercoil Municipality presently Municipal Corporation, we had instituted the suit. The petitioners submit that our late father namely Thiru. S. Jayachandran was all along contesting the arbitrary and vexatious enhancement of the building tax by the Nagercoil Municipality. Though our father had instituted two suits against the Nagercoil Municipality and though this court had decreed the suit against the Nagercoil Municipality and mandated the Nagercoil Municipality to strictly follow the mandatory provisions thereon. But, still the Nagercoil Municipality had enhanced tax arbitrarily and threatened to initiate coercive steps in this regard. In those circumstances, petitioners have instituted the suit for the reliefs sought thereon. While shifting to Coimbatore, the petitioner had kept material documents and other material things in the locker for safe custody. The previous correspondent between our father and

Nagercoil Municipality with regard to the enhancement of building tax and other connected documents were also kept in the locker. Whereas. The petitioner failed to inform the matter to petitioner's younger brother who was examined as the PW1 herein. Therefore, the petitioner's brother, PW1 was not able to produce the documents before this Court at the earliest point of time. Whereas those documents which are described in the accompanying application and kept in the bank locker are material documents which would speak volumes with regard to the arbitrary attitude of the Nagercoil Municipality and those documents would play a vital part for the ends of justice. On the direction of our advocate, the petitioner had come down to Nagercoil and opened the locker on 18.09.2024 and collected the material documents from the locker and necessary documents are submitted herewith. The petitioner that non-production of those documents at the earlier point of time is neither wanton nor wilful. Whereas by exhibiting and considering the same, this court can render fair justice in this matter. The defendants are not going to be affected in any manner and definitely no prejudice would cause to the defendant. Hence, the petition is to be allowed.

2. Gist of Averments in the 3rd Respondent/3rd Defendant Counter:

The 3rd Respondent/3rd Defendant had filed counter stating that the averments in the affidavit in support of the petition to receive the documents and exhibit the same on the side of the petitioners save those which are specifically

admitted hereunder shall be deemed to be denied. The allegation in the 3rd paragraph of the affidavit are not fully correct. It is humbly submitted that this respondent followed the mandatory provisions and issued demand notice in accordance with law. The allegations in the 4th paragraph of the affidavit are not fully correct. Besides, it is submitted that the present suit is filed only challenging the demand notice dated 22.09.2024 issued by this respondent and hence the documents listed in the schedule are not at all relevant to the case of plaintiffs. The further averments that “on the direction of our advocate, the petitioner had come down to Nagercoil and opened the locker and collected the material documents” are not correct; because, the advocate of the plaintiffs may not have the knowledge about the locker and the material documents of are available in the locker. There is no bonafide averments in the affidavit. The petition is not maintainable in law and on facts at this stage. Hence, the respondent pray that to accept this counter and dismiss the petition with costs.

3. The point for consideration is whether the above petition has to be allowed or not.

4) Point:

Heard both sides. Records perused. This petition has been filed by the petitioners, while the original case has been adjourned for PW1 chief continuation. Although the Petitioners / plaintiffs have not given proper reasons

for not filing the documents promptly, this court considers that the documents filed with the petitioners petition are necessary to decide the original case and to give the petitioners sufficient opportunity to prove the case. Hence, this court inclined to allow this petition .

5) As a result,

This petition is allowed, subject to the proof and relevance of the said documents, without cost.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 28th day of November, 2024.

sd/-

II Additional District Munsif, (FAC)
Nagercoil.

List of witness and documents for Petitioner side : Nil

List of witness and documents for Respondents side : Nil

sd/-

II Additional District Munsif, (FAC)
Nagercoil.

II ADM, Nagercoil.
Draft/Fair common Order
I.A.No. 5/2024 &
O.S.No.26/2022
Date: 28.11.2024.