

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)
Monday, on the 24th day of February, 2025.

I.A. Nos. 6 of 2024 in O.S. No. 32 of 2020

C. Xavier Pushparaj ... Petitioner/1st defendant

-vs-

1. C. Yesudhasan

2. C. Yesu Mariya Selvaraj (died)

Addl. 3. Maria Thangam

Addl.4. John Britto

Addl.5. Yesu Thangaraja ... Respondent/Plaintiff/2 to 4
defendants

This petition came before this court on 13.02.2015 for a final hearing in the presence of Mr. Anand A. Wilson, learned counsel for the petitioner/1st defendant, and Mr. R. Radha Krishnan, learned counsel for the 1st Respondent/Plaintiff and Addl. 3 to 5 Respondents / Addl. 3 to 5 defendants were set exparte in the suit and 2nd respondent/2nd defendant is died 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 petitioners have filed the above petition under Order IX Rule 7 and Section 151 of the Code of Civil Procedure, seeking to pass an order to set aside the ex parte order passed against the petitioner/1st defendant on 21.02.2024 and thus render justice.

2. **Gist of Averments in the Petitioner/1st defendant Petition:**

The petitioner is the 1st defendant in the suit. The plaintiff filed the suit for permanent injunction restraining the 1st defendant and his men from interfering with the plaintiff's peaceful possession and enjoyment over the plaint schedule property by damaging or changing the nature of the plaint schedule property in any manner. On 21.02.2024, the case stood posted for filing our written statement of the 1st defendant. The petitioner submit that petitioner was suffering from illness. The petitioner was not able to contact petitioner's advocate to make necessary arrangements to file the written statement on 21.02.2024. Because of non filing of the written statement, petitioner was called absent and set ex parte. Today, petitioner was filing the written statement along with the set aside petition. The non filing of written statement was neither wilful nor wanton. If the ex parte order dated 21.02.2024 passed against petitioner is not set aside, petitioner will be put to irreparable loss and hardship. So, it is just and necessary that this court to pass an order to set aside the ex parte order

passed against petitioner on 21.02.2024 and render justice. Hence, this petition is to be allowed.

3. Gist of Averments in the 1st Respondent/Plaintiff Counter:

The 1st Respondent/Plaintiff had filed counter that the petition is not maintainable in law on facts. The averments stated in paras 1, 2 and 3 of the affidavit are admitted. The averments stated in para 4 of the affidavit is an invented one to file this petition. No medical certificate was produced to prove the illness of the petitioner/1st defendant. This petitioner had filed this petition only drag on the legal proceedings of the suit proceedings and waste the precious time of this court. This petitioner already filed a petition in I.A.No.4 of 2021 to reject the plaint. But, the above said I.A.No.4 of 2021 was dismissed on 11.01.2024. After that this court has granted several opportunities to file his written statement. But this petitioner has failed to file his statement on 21.02.2024 and he was set exparte. It is humbly submitted that this petitioner states that he was illness on 21.02.2024. After several months this petitioner filed this petition without any valid reason. Hence this petition is not maintainable in facts. The petition lacks bonafides. The petitioner has no locus standi to file this petition. The petition is devoid of merits and truth. This petition is liable to be dismissed with cost. Hence, the respondent prayed that to accept this counter and dismiss the petition with costs.

4) The point for consideration is whether the above petitions have to be allowed or not?

5) Point:

Heard both sides. Records perused. This Court considers the submissions of both counsels and peruses the materials on records. On perusal of records, the original suit has been filed by the 1st Respondent/plaintiff against the Petitioner/ 1st defendant and 2nd respondent/2nd defendant for the relief of permanent injunction.

6) In spite of the fact that the reason, the petitioner non-appearance in this court on 21.02.2024, for filing written statement of the 1st defendant has been stated in the petition, due to petitioner was suffering from illness. The petitioner was not able to contact petitioner's advocate to make necessary arrangements to file the written statement on 21.02.2024. Because of non filing of the written statement, petitioner was called absent and set exparte. The non filing of written statement was neither wilful nor wanton. If the exparte order dated 21.02.2024 passed against petitioner is not set aside, petitioner will be put to irreparable loss and hardship.

7) No oral or documentary certificate has been filed by the petitioner in this court to prove the above reason. Therefore, the plea raised by the petitioner in this petition is not acceptable to this Court.

8) However, for a complete judicial determination of the original case, it is necessary to grant permission to the petitioner / 1st defendant side to file a written statement; hence, in the interest of justice, this Court inclined to allow this petition on conditional cost.

8) As a result,

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees Thousand only) to the 1st Respondent / Plaintiff on or before 27.02.2025, otherwise, this petition would be dismissed. Call on 27.02.2025.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 24th day of February 2025.

II Additional District Munsif (FAC)
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif (FAC)
Nagercoil.

Draft/Fair Order
I.A.No. 6/2024 &
in
O.S.No.32/2020
Date: 24.02.2025

I.A.No.6 of 2024 in O.S.No.32 of 2020

Order Pronounced:

Dated: 24.02.2025

As a result,

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees Thousand only) to the 1st Respondent / Plaintiff on or before 27.02.2025, otherwise, this petition would be dismissed. Call on 27.02.2025.

IIADM (FAC)