

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil.
Tuesday, on the 4th day of November, 2025.
I.A. No. 5 of 2025 in I.A.No.3 of 2024 in

O.S. No. 17 of 2024

CNR No.TNKK04-000039-2024

1. R. Sathiya Rooban
2. N.K. Sathasivam
3. A. Sivakumar
4. B. Abionesh
5. S. Vaikundaraja

... Petitioners / Respondents
2 to 5 / defendants 1 to 5

-vs-

1. V. Mathan
2. Arulmigu Devi Sree Mutharamman Thirukovil and
Sudalaimadaswamy Hindu Nadar Vagai Trust,
Sarakkalvilai rep. by its President M. Baskar and
others.
3. M. Baskar
4. J. Jeyavel Murugan
5. S. Chenthilvel
6. C. Nadarajan
7. K. Sakthivel

... Respondents / Plaintiff /
Proposed Addl.
Defendants 6 to 11

This petition came before this court on 03.11.2025 for a final hearing in the presence of Mr. R. Siva Rajendran, Advocate for the Petitioners and Mr. R. Pravin, Advocate for the 1st Respondent / Plaintiff and Mr. C. Azhakesan, Advocate for the 2 to 7 Respondents 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 IX Rule 7 and Section 151 of the Code of Civil Procedure, seeking to set aside the exparte order passed by this court on 16.07.2024 in I.A.No.3 of 2024 against the petitioners / defendants 2 to 6,

2. Gist of Averments in the Petitioners Petition :

The petitioner is the 1st petitioner herein and the 1st defendant in the above suit and the 2nd respondent in the impleading petition I.A.No.3 of 2024 and as such petitioner was well acquainted with the facts of this case. The petitioner was looking after this case for petitioner and on behalf of the other petitioners 2 to 5 herein / defendants 2 to 5 in this case. As such petitioner was filing this affidavit for petitioner and also for on behalf of the other petitioners / other defendants 3 to 6 who are the respondents in I.A.No.3 of 2024. The suit has been filed by the plaintiff for declaration and permanent injunction. As such one Baskar and 5 others filed an impleading petition as I.A.No. 3 of 2023 and same

was posted for counter of the respondents. Thereafter the above said I.A's was posted by this court on 16.07.2024 for filing of counter of the respondents. But on 16.07.2024 no counter was filed by the respondents 2 to 6 / the petitioners 1 to 5 herein due to reason that petitioner was affected by high fever from 10.07.2024 and petitioner was advised by petitioner's doctor to take rest for one month. Hence, petitioner could not meet petitioner's advocate within the time ie. 16.07.2024 for filing counter and thereby counter was not fled on the side of the respondents 2 to 6. Hence, this court has passed an exparte order against the respondents 2 to 6 on 16.07.2024 in the above I.A.No.3 of 2024.

3. The non-filing of counter is neither wilful nor intentional which was caused due to the above said bonafide reason. The petitioners have got strong contentions to the I.A.No.3 of 2024. For that along with this petition, to day petitioners are filing an elaborate counter. In the above said circumstances no prejudice will be caused to the petitioners; if the aforesaid exparte order dated 16.07.2024 against the respondents 2 to 6 in I.A.No.3 of 2024 is set a side by this court. Otherwise, the petitioners in I.A.No. 3 of 2024 will be unnecessarily caused interferences against the respondents 2 to 6 and the suit temple. Hence, it is highly necessary to set aside the exparte order passed by this court on 16.07.2024 against the respondents 2 to 6 and the I.A.No.3 of 2024 has to be decided on merits after receiving the counter to I.A.No.3 of 2024. Hence, this petition is to be allowed.

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

The 1st Respondent has filed counter stating that the petition is not maintainable in law. The petitioner has not produced any medical records to show that he was affected by viral fever and he was advised by the doctor to take rest for 2 weeks. The non filing of the counter by the petitioners within the time was to harass the responsible and to drag on the proceedings of the case. The petition is not supported by good faith. The petition lacks bonafide. The petition deserves to be dismissed. Hence, to accept the counter and dismissed the petition.

5. **Gist of Averments in the 2nd to 7th Respondents / Addl. 6 to 11 defendants Counter:**

All the averments in the affidavit in support of the petition except those that are hereinafter admitted or otherwise dealt with shall be deemed to have been denied. The grounds alleged are not true and correct. The petitioner has not produced any medical certificate to prove his ill-health. The petitioners not filed their counter on time with an intention to protract the proceedings and to harass the respondents. The petition is not supported by good faith. The petition lacks bonafides. The petition deserves to be dismissed. Hence, to accept the counter and dismissed the petition.

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

7. Point:

Heard both sides. Records perused. The petitioner is the 1st defendant in the suit filed for declaration and Permanent injunction and 2nd respondent in the impleading petition I.A.No.3 of 2024. When the case posted for filing counter on 16.07.2024 in I.A.No.3 of 2024, this court passed an ex parte order against the petitioners for non filing of counter in the I.A.No.3 of 2024. the reason stated by the petitioner for non filing of the counter is that the petitioner suffered from high fever from 10.07.2024 and was advised by doctor to take rest for one month. Hence, petitioner could not meet petitioner's advocate within the time i.e. 16.07.2024 for filing counter and thereby counter could not filed on the side of the 2nd to 6th respondents.

8. Considering the above reason would have happened which led to such an inevitable situation of the petitioner and to give a fair opportunity, this court is inclined to allow this petition on conditional cost.

As a result,

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.1,000/- (Rupees One Thousand only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 08.11.2025. otherwise, this petition would be dismissed. Call on 08.11.2025.

Dictated to the steno-typist, typed by her in the Computer directly,
printed, corrected and pronounced by me in open court this the 4th day of
November, 2025.

II Additional District Munsif
Nagercoil

List of witness and documents for Petitioners side : Nil

List of witness and documents for Respondents side : Nil

II Additional District Munsif
Nagercoil.

*II ADM, Nagercoil.
Draft/Fair Order
I.A.No.5/2025 in
I.A.No.3/2024 in
O.S.No.17 of 2024
Date: 04.11.2025.*