

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

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,
I Additional District Munsif, Nagercoil.

Friday, on the 3rd day of January, 2025

I.A. No. 10 of 2024 in I.A. No. 8 of 2024

&

I.A.No. 11 of 2024 in I.A. No. 9 of 2024

in

O.S. No. 224 of 2018

CNR. No.TNKK04-000367-2018

T. Saroja Justis rep. by

Power holder A. Regu Anantha Raj

... Petitioner/Plaintiff

-vs -

1. Hepsiba Gnana Glorital

2. L.S. Ahisha Gnana Merlibah

3. L.S. Jeush Deva Kiruba

... Respondents/Addl.Defendants 2 to 4

These Petition came before this Court on 11.12.2024 for final hearing in the presence of Mr. T.Shunmugam, Learned Counsel for the Petitioner and Mr. C. Victor Sam, Learned Counsel for the Respondents. Upon hearing both sides and Upon perusing the case records and having stood over, till date for Consideration, this Court hereby delivers the following:

COMMON ORDER

1. The Petitioner had filed I.A. No. 10 of 2024 under Order IX Rule 7 and Section 151 Code of Civil Procedure, seeking an order to set aside the exparte order,

passed against him in I.A. No.8 of 2024, dated 20.04.2024.

The Petitioner had filed I.A.No.11 of 2024 under Order IX Rule 7 and Section 151 Code of Civil Procedure seeking an order to set aside the exparte order passed against him in I.A. No. 9 of 2024 dated 12.04.2024.

2. In the affidavit, filed in support of the above Petition, the deponent had stated that the Petitioner is the Power Holder of the Plaintiff and well acquainted with the facts of the case. The Petitioner had stated that the suit was decreed on 03.03.2022 and Execution Petition in E.P.No.19 of 2022 has been filed and after passing of the Decree, the Judgement Debtor had died on 03.08.2023. The legalheirs of the Judgement Debtor have filed Petition in I.A.No.8 of 2024 seeking an order to condone the delay of 505 days in filing Petition to set aside the exparte Decree. They have filed Petition in I.A.No.9 of 2024 seeking an order to implead them, as legal heirs of the deceased Defendant/Judgement Debtor.

3. The deponent of the affidavit, filed in support of the above Petitions have also stated that he is working as teacher at vallyoor. On 12.04.2024 Government examination was going and as such, he could not get leave and his Advocate was also not in a position to appear before this Court and represent, due to Advocates' boycott. Hence the Petitioner was set exparte. The Petitioner has objection for I.A.8 of 2024 and I.A.No.9 of 2024. Hence the expate set aside Petitions have to be allowed.

4. The 1st Respondent had filed the counter and the Respondents 2 and 3 have filed adoption memo. The Respondents in their counter have stated that the reason

stated for not appearing before this Court on 12.04.2024 is flouted, for the purpose of filing the above Petition. Advocates' boycott is not for the Petitioner/Plaintiff, but for the Advocates. The absence of the Petitioner/Plaintiff is willful, it is not by way of natural acts or cause. If, I.A.No.8 of 2024 and I.A.No.9 of 2024 are not allowed, the Respondent will be put to irreparable injury, impleading the legal heirs of Lazarus is necessary for proper adjudication of the suit. Hence the Respondent prayed for dismissal of the above Petitions. The Respondent has also stated that the Petitioner had filed the suit by willfully, wrongly mentioning, the Defendant's name. The exparte set aside Petition filed in the Execution Petition has been reserved for orders.

5. The point for consideration is Whether the above Petition has to be allowed or not ?

6. The affidavit in support of the above Petitions have been filed by the Petitioner's power agent. Having accepted to act, as the power agent of the Petitioner, the power agent had stated that he is working as teacher in Government school at Valliyoor and also stated that on that day, school examination were going on and he could not appear before this Court and his Counsel could also not appear before this Court, for the reason that the Advocates were boycotting on that day. Hence the docket order dated 12.04.2024 was perused.

7. On 12.04.2024 the notice in the above Petition had been served on the Respondent in I.A. No.8 of 24 and in I.A. No.9 of 2024. However there was no appearance on behalf of the Petitioner, in those two interlocutory applications. The above Petition has been filed on 07.06.2024 that is on the next hearing date in I.A.

No.8 of 24 and in I.A. No.9 of 2024. Considering the reasons stated in the affidavit filed in support of the above Petitions, this Court is of the considered view that the above Petitions could be allowed on terms.

In the result,

I.A.No. 10 of 2024 is allowed on condition, the Petitioner pays the sum of Rs. 500/- (Rupees Five Hundred Only) to the Respondents on or before 03.02.2025 call on 04.02.2025.

I.A.No. 11 of 2024 is allowed on condition, the Petitioner pays the sum of Rs. 500/- (Rupees Five Hundred Only) to the Respondents on or before 03.02.2025 call on 04.02.2025.

Total cost Rs. 1000/- (Rupees One Thousand Only)

Dictated to the Steno-Typist, transcribed and typed by her in the Computer, corrected and pronounced by me, in open Court this, the 3rd day of January, 2025.

I Additional District Munsif,

Nagercoil.

Petitioners' side witnesses & documents : Nil.

Respondent's side witnesses & documents : Nil.

I Additional District Munsif,

Nagercoil.

*I ADM Court, Nagercoil.
Draft/Fair Common Order in
I.A.No.10/2024 & 11/2024 in
O.S.No.224/2018
Date:03.01.2025.*