

**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)

Tuesday, on the 29th day of October, 2024.

I.A. No. 2 of 2024 in O.S. No. 323 of 2014

Arul ... Petitioner /Defendant

-vs-

1. Varghese

2. Sheela ... Respondents / Plaintiffs

This petition came before this court on 24.10.2024 for a final hearing in the presence of Mr. M. Timitilal, learned Counsel for the Petitioner / defendant and Mr. M.E. Appan, learned counsel for the Respondents / Plaintiffs 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 Code of Civil Procedure, seeking to pass an order to set aside the exparte order passed on 09.08.2024.

1. Gist of Averments in the Petitioner Petitions :

The petitioner is the defendant in the suit. This suit is now adjourned for arguments on 09.08.2024. On 09.08.2024, the suit is posted for the petitioner's side evidence. The petitioner's lawyer was unable to appear in this court due to the lawyers boycotting the court on 09.08.2024. He could not appear before this court and set ex parte, and the case was posed on 16.08.2024 for argument . By the exparte order the petitioner was put into much loss and hardship. There was no willful negligence or deliberate action on his part. Therefore, it is very necessary in the interests of justice to quash and exparte order passed on 09.08.2024 and pass the order. Hence, the petition is to be allowed.

2. Gist of Averments in the Respondents Counter:

The respondents/plaintiffs have filed a counter stating that the above petition is not maintainable in law. This petitioner/defendant has been all along participating in the proceedings by himself and his Advocate. The defendant's Counsel cross examined the plaintiff and her witness PW2 in full on 25.04.2024. From 06.06.2024 onwards the case was posted for defendant's side evidence. From 06.06.2024 onwards the case is posted for the evidence on side of defendant, but the defendant has not taken any steps to adduce evidence. Moreover they have not even represented the court and the Court Diary will reveal the same. So, at last this court has made defendant exparte on 09.08.2024.

The reason adduced by the defendant to set aside the ex parte order is not a genuine and proper and cannot be accepted. The defendant has not come with clean hands in filing this petition. There is no merit in this petition. There is no bonafide in this petition. Hence, the respondents pray that to accept this counter and dismiss the petitions 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 Court considers the submissions of both counsels and peruses the materials on record. On perusal of records, the original suit has been filed by the respondents/plaintiffs against the petitioner/defendant for relief of declaration, permanent injunction.

5) In spite of the fact that the reason for the petitioner's non-appearance in this court on 09.08.2024 has been stated, in the petition the petitioner's lawyer was unable to appear in this court due to the lawyers boycotting the court on 09.08.2024. Therefore, the plea raised by the petitioner in this petition is not acceptable to this Court.

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

7) As a result, this petition is allowed on the condition that the petitioner shall pay a sum of Rs.500/- (Rupees Five Hundred only) to the Respondents on or before 07.11.2024 otherwise, this petition would be dismissed. Call on 07.11.2024

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 29th day of October, 2024.

sd/-

II Additional District Munsif, (FAC)
Nagercoil.

List of witness and documents for Petitioner side : Nil

List of witness and documents for Respondent side : Nil

sd/-

II Additional District Munsif, (FAC)
Nagercoil.

II ADM, Nagercoil.

Draft/Fair common Order

I.A.No. 2/2024 &

O.S.No.323/2014

Date: 29.10.2024.

I.A. No. 2 of 2024 in

O.S.323 of 2014:

Order Pronounced:

Dated: 29.10.2024

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II ADM (FAC)