

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

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

II Additional District Munsif, Nagercoil.
Thursday, on the 23rd day of October, 2025.
I.A. No. 5 of 2025 in I.A.No.4 of 2025 in

O.S. No. 323 of 2014

CNR No.TNKK04-000716-2014

S. Arul

... Petitioner / Respondent /
defendant

-vs-

1. M. Varghese, rep. by his
through his power holder, V. Sheela

2. V. Sheela

... Respondents /Petitioners /
Plaintiffs

This petition came before this court on 17.10.2025 for a final hearing in the presence of Mr. M. Timitilal, Advocate for the Petitioner and Mr. M.E. Appan, Advocate 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 of the Code of Civil Procedure, seeking to set aside the exparte order in I.A.No.4 of 2025 passed on 25.08.2025 against the petitioner/defendant.

2. Gist of Averments in the Petitioner's Petition :

The petitioner is the defendant in the Original suit. The plaintiffs filed this suit for declaration of title and injunction. The suit was posted today 01.09.2025 for orders in I.A.No.4 of 2025. Previously the case was posted for filing counter on 25.08.2025. From 20.08.2025 onwards, the petitioner suffered from severe fever. So, petitioner was unable to come out of petitioner's home. The doctor advised petitioner to undergo bed rest for atleast 10 days. So, petitioner was unable to meet petitioner's counsels to give instruction and affix petitioner signature in the counter. So, on 25.08.2025, this court petitioner's side set exparte for non filing of counter in the I.A.No.4 of 2025. Non filing of counter on 25.08.2025 is neither wilful nor wanton, but only due to petitioner severe illness, petitioner have a good case to defend the I.A.No.4 of 2025 and to protect petitioner rights. Hence, the exparte order passed on 25.08.2025 in I.A. No.4 of 2025 is to be setaside, otherwise, petitioner will be put into loss and untold sufferings. Hence, this petition is to be allowed

3. Gist of Averments in the Respondents / Plaintiffs Counter:

The Respondents have filed counter stating that the petition is not maintainable in law. This respondents / plaintiffs filed the commission application as I.A.No.4 of 2025 on 01.08.2025 and notice of hearing was given on 06.08.2025 and it was posted for counter of the petitioner / defendant on

12.08.2025. On that date there was no representation from the petitioner / defendant and the case was posted to 19.08.2025, then it was posted as last chance and NFA on 25.08.2025. Since, there was no representation on defendant side, respondent was set exparte and the petitioner side was heard by the court and posted for orders on 01.09.2025. On 01.09.2025 the petition to setaside the exparte order was filed by the defendant only to drag on the case and to put the plaintiff to hardship. The respondents / plaintiffs was put to hardship, irreparable loss and injury because of the act of the defendant. No proper reason is adduced to setaside the exparte order. There is no merit in this petition and it lacks bonafide. Hence, to accept the counter and dismissed the petition.

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

5. Point:

Heard both sides. Records perused. The petitioner is the defendant in the suit filed for declaration and Permanent injunction. When the case posted for filing counter on 25.08.2025 in I.A.No.4 of 2025, this court passed an exparte order against the petitioner for non filing of counter in the I.A.No.4 of 2025. the reason stated by the petitioner for non filing of the counter is that from 20.08.2025 onwards, the petitioner suffered from severe fever. So, the petitioner was unable to come out of home and advised to undergo bed rest for

atleast 10 days. So, petitioner was unable to meet petitioner's counsels to give instruction and affix petitioner signature in the counter. Non-filing of counter is neither wilful nor wanton, but only due to petitioner severe illness.

6. 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 petitioner shall pay a sum of Rs.300/- (Rupees Three Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 27.10.2025. otherwise, this petition would be dismissed. Call on 27.10.2025.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 23rd day of October, 2025.

II Additional District Munsif
Nagercoil

List of witness and documents for Petitioner 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.4/2025 in
O.S.No.323 of 2014
Date: 23.10.2025.*