

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT KANCHIPURAM

**PRESENT: Tmt. Fanny Rajan.B.A., B.L.,(Hons)
Principal District Munsif, Kanchipuram**

On Thursday, this the 5th day of March 2026

IA.No. 16/2026

in

O.S.No. 100 of 2011

CNR.No.TNKP08--000167-2011

R. Balamurugan

... Petitioner/ 2nd Defendant

/Versus/

1. Theeran

2. T. Vasu

...Respondents/ Plaintiffs

This petition has come up on 25.02.2026 before me for final hearing in the presence of M/s. G. Manimaran, M.Sankar counsels for the Petitioner/ 2nd Defendant and M/s.M. Madanagopal, S. Bharathi counsels for the Respondents/Plaintiffs and upon hearing the arguments and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

ORDER

1. This petition is filed by the petitioner under Order IX Rule 7 & Section 151 of CPC seeking to set-aside the exparte order passed against him on 02.11.2012 and thus render justice.

Concise Statement of the averments in the Petition filed by the Petitioner:

2. The petitioner has averred that Rathina Kumar is his adoptive father and the 1st defendant in the suit, who was contesting the case from the initial stage. He bonafide believed that his adoptive father, being the head of the family and directly involved in the dispute was safeguarding his interest. Due to family-related issues, unavoidable personal issue, he was not able to remain in continuous communication regarding the progress of the case and appear at an earlier stage.

3. He is most effective and necessary party to the present suit, as the issues involved directly relate to his status and rights as the adopted son of Rathina Kumar. Being now fully aware of the proceedings, he is prepared to actively contest the suit on merits. He has a bonafide and substantial defence, and ready to adduce his evidence. His presence and evidence are essential for the just and proper adjudication. Without his participation, the matter cannot be effectively decided on merits. Becoming aware of the exparte order, he filed this petition without delay to establish his bonafides. If the exparte order is not set aside, he will be put to much loss and hardship. Hence this petition.

Concise Statement of the averments of the Counter filed by 2nd Respondent:

4. The Respondents have averred that the petition is most unsustainable in law and on facts. The affidavit lacks details about date of adoption, whether he was living with his adopted father, whether the Settlement Deed dated 29.04.2004 was executed in

favour of this adopted father, date of ex parte order, reasons for non appearance, what happened in the interim.

5. As per Order IX Rule 7 CPC, the petitioner has to assign good cause for his non appearance. The reasons quoted are evasive for non appearance and long absence. The petitioner was set ex parte for non filing of written statement. After more than 14 years this petition is filed and is barred by Article 137 of the Limitation Act. There is no reason for delay though the Petitioner admits he is a necessary party to the suit. Hence, the Petition has to be dismissed.

6. **POINTS FOR DETERMINATION:** Whether this petition under section Order IX Rule 7 and section 151 of CPC to set aside the ex parte order dated 02.11.2012 has to be allowed or not?

Discussion and Findings:

7. This Court heard the oral submissions made by both parties and perused all the materials on record. This Court finds that no oral or documentary evidence has been let in on behalf of either parties. Upon records, it is noted that the Petitioner herein was set ex parte in this suit on 02.11.2012 after issuance of paper publication.

8. Firstly, this court considers the main contention of the learned counsel for the respondents that this petition is barred by limitation under Article 137 of the

Limitation Act. This petition ought to have been filed within 3 years from the date of ex parte order. But despite knowledge it is filed after 14 years. The learned counsel for the Respondents relied on the judgment in *Visalakshi Vs. Umapathy and others, C.R.P.No. 4082/2013 dated 19.12.2014 by the Hon'ble Madras High Court.*

9. This court takes note of the subsequent judgment in *Rajasekar Vs. Govindammal (Late) I.Dhavamani, 2020 (6) CTC 724.* In the said judgment, the Hon'ble Madras High Court clearly held that the judgment in *Visalakshi case (Supra)* is not good in law in as much as, they are in conflict with the decisions of the Hon'ble Supreme Court in *Sangram Singh v. Election Tribunal, Kotah and others, AIR 1955 SC 425, and Arjun Singh v. Mohindra Kumar and Others, AIR 1964 SC 993.* Further, it held that Article 137 of the Limitation Act, does not apply to an application under Order IX Rule 7 of the Code of Civil Procedure and the same can be filed at any time before the judgment is delivered in the suit or proceeding.

10. In light of the dictum in *Rajasekar case (supra)*, the position regarding the finding in *Visalakshi case (Supra)* has been held per incuriam and thus not assisting the respondents contention. Hence, this court finds that the contention that this petition is hit under Article 137 of the Limitation Act relying on the

judgment in *Visalakshi case (Supra)* cannot be entertained. The suit is currently at the arguments stage when this petition is filed and no final judgment has been passed as on date. This court concludes that the Order IX Rule 7 Petition filed by the Petitioner is maintainable.

11. Now moving on to the merits of the instant petition, this court takes judicial note of the fact that whether the petitioner assigned good cause for his absence with the meaning of Order IX Rule 7 depends on facts and circumstances of a case. In this case, upon perusal of records it is evidenced that the summons to the Petitioner/2nd defendant herein through court and post in this suit was returned as no such address. Thereafter, substituted service was permitted, paper publication was effected and the Petitioner/2nd defendant was called absent and set *ex parte* on 02.11.2012.

12. Further, from the records, it is also noted that this suit is in joint trial with the O.S.No.325/2008 and the Petitioner/2nd defendant herein had filed his vakalat alongwith the 1st defendant in this suit. Also, the written statement of the 1st defendant was filed and adopted by this petitioner in O.S.No.325/2008. From the above facts, it is clear that the 1st defendant and 2nd defendant (Petitioner herein) in both the suits are the same. The 2nd defendant is aware of the earlier suit, wherein he had appeared.

13. Whileso, in this suit, even as admitted by the Petitioner/2nd defendant, he does not deny lack of summons or knowledge about the suit. He only claims that as the 1st Defendant is his adopted father, he believed, he would take care of the suit. Currently, the suit is at arguments stage when this petition is filed. There is no viable reason or intervening circumstance explained to show why this petition is filed at this stage, when the Petitioner was aware of the suit earlier and all along believed that the 1st defendant/adopted father was taking care of the case.

14. In this case, all the contesting parties have already adduced sufficient evidence. When the defendant evidence was closed and posted for arguments, the Respondent/Plaintiff herein had filed their written arguments on 06.01.2026. At that juncture, a petition for reopen, recall, additional documents were filed on behalf of the 1st defendant and allowed. Accordingly, the 1st defendant DW1 has appeared in person and deposed further evidence.

15. It is true that there is a specific issue regarding the adoption deed and status of the 2nd defendant's adoption which plays a vital role in deciding the issue at hand. The 1st defendant had duly contested the suit and let in extensive evidence. Now when again the suit is posted for arguments, this petition to set aside the exparte order with written statement is filed by this petitioner.

16. There is no single averment to indicate when the Petitioner became aware of the ex parte order and the mode of receiving such knowledge. On the other hand he admits that though he had knowledge did not appear as the 1st defendant was handling the case, as his father and head of the family. Even as per the Petitioner, it is the 1st defendant who is directly involved in the dispute.

17. This court finds that the reason that due to family related issues, unavoidable personal issues, he was unable to follow up the progress of the case is a very vague statement. There is no specific reason cited for the long absence in this case despite knowledge of suit and issues involved. Further, there is no specific reason stated regarding, why suddenly now the Petitioner wants to appear and file his written statement.

18. More than 15 years have lapsed since the suit is filed and the 1st defendant appeared in the suit. There is also no special circumstances indicated to show why now the Petitioner wants to contest the suit, when he believed his adopted father was taking care of the case on his behalf. What is the alleged new intervening circumstance which has now necessitated the appearance of the Petitioner and contesting the suit is not specifically pleaded.

19. In light of the well established principle of law, *Vigilantibus non dormientibus jura subveniunt* i.e. the law cannot help the person, who fails to

exercise the necessary diligence. The said maxim aptly applies to the case on hand, as the Petitioner categorically admits knowledge about the suit since the beginning. Having knowledge about the suit, the Petitioner all along had an opportunity to appear before this court and contest the matter on merits and submit his case with evidence. However, he deliberately remained silent till the suit is ripe for arguments, without any good cause.

20. This court considers that merely because the Petitioner's status is in question, a lenient view cannot be adopted when the Petitioner was clearly aware of the suit and the issues involved. The manner in which the 1st defendant filed one petition after another at the stage of arguments since December 2025 clearly indicates that the defendants especially the 1st defendant does not want to proceed with the suit. This indicates that the 1st and 2nd defendant being allegedly father and adopted son have colluded with each other and deliberately filed this petition at the fagend only to delay the proceedings in the suit.

21. There is no good cause to establish and condone the absence of the Petitioner despite knowledge of the suit. This court finds that in the absence of any valid explanation, the Petitioner has been grossly negligent and lacks in bonafides. As has been laid down by the Hon'ble Apex Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the

same principle cannot be given a go-by under the guise of liberal approach for deciding issues on merits. The filing of an application to set aside after 15 years without disclosing reasons, much less satisfactory good cause only results in the Petitioner not deserving any indulgence by the Court. Having deliberately remained exparte citing that the 1st defendant was contesting the suit is sufficient to hold that no prejudice would be caused to the Petitioner herein as his rights are being duly represented and contested by the 1st defendant.

22. In fact the merits of the main case cannot be a reason to establish good cause for setting aside the exparte order. Good cause has to be established by the Petitioner in respect of his absence or inaction since 2012 till 2026. As rightly pointed out by the learned counsel for the respondent, even after knowledge of the suit, the petitioner was not diligent. Taking into consideration all the above facts, this court considers that the petitioner has failed to act diligently and bonafide. There is no viable and acceptable reason quoted for lack of diligence and delay in filing this petitions despite being aware of the suit as early as 2012.

23. When the Petitioner wants to show his bonafides, he has to act diligently. The day to day delay even subsequent to knowledge of the decree is not duly explained. In this case, the Petitioner has failed to proceed with filing this petition expeditiously despite knowledge. Hence, this court is of the considered

view that the Petitioners have failed to show good cause for setting aside the exparte order dated 02.12.2012.

24. Considering the nature of the petition, the relief sought for, this Court is of the considered view that the parties shall bear their own costs.

RESULT :-

25. In the result, this Petition is dismissed. No costs.

Dictated to the steno typist partly, who directly typed the same in her Computer and partly typed by me, corrected and pronounced by me in open court, this the 5th day of March 2026.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM

Petitioner and defendant side witness and document : NIL

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM