

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF
AT KANCHIPURAM

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

On Thrusday, this the 12th day of March 2026

IA.No. 3 of 2025
in
O.S.No. 177 of 2022

CNR.No.TNKP08-000379-2022

Pushpa

... Petitioner/Defendant

/Versus/

D. Thanigaiarasu

...Respondent/ Plaintiff

This petition has come up on 16.02.2026 before me for final hearing in the presence of M/s. M. Senthil counsel for the Petitioner/ Defendant and M/s. Raju counsel for the Respondent/Plaintiff 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 her on 05.06.2023 and thus render justice.

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

2. The petitioner has averred that the case was posted on 05.06.2023 for filing written statement. She was suffering from Paroxysmal Vertigo with severe OA in both knee from May 2023 and bedridden. Hence, she could not contact her counsel and give instructions to prepare the Statement. The non filing of written statement on that day is neither willful nor wanton. She recovered from the illness in the first week of September, 2025, contacted her counsel and came to know about the exparte order. She has a good case on merits. Hence this petition.

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

3. The Respondent has averred that the petition is vexatious and denied the averments. The Petitioner was set exparte on 05.06.2023 while this petition is filed on 29.10.2025. The medical illness is quoted without medical certificate. This petition is filed to drag the proceedings. The reasons quoted is not at all maintainable. Hence, the petition is liable to be dismissed.

4. **POINTS FOR DETERMINATION:** Whether this petition under Order IX Rule 7 and section 151 of CPC to set aside the exparte order dated 05.06.2023 has to be allowed or not?

Discussion and Findings:

5. This Court heard the submissions of both the learned counsels and perused the materials on record. This Court finds that both the parties have not let in any oral or documentary evidence to substantiate their claims.

6. This Court finds it necessary to take judicial note of the ratio decidendi of the Hon'ble Supreme Court in several cases that ***It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor.***

7. In view of the above said dictum, this Court examines if a liberal approach can be adopted in the case of the Petitioner. On thorough perusal of the records, this Court finds that the main contention of learned counsel for the Petitioner, contended that the absence is neither wilful nor wanton but due to ill health, the medical certificate is produced. Per contra, the learned counsel for the Respondent is that the petition is filed with enormous delay and there is no medical certificate. This court finds that a petition for set aside was filed on 05.06.2023 after this petition was posted for exparte evidence.

8. It is a well settled principle of Law by the Hon'ble Apex Court and Hon'ble Madras High Court in a pleathora of Judgments that the Courts shall always endeavour to adjudicate and decide the petitions on merits and provide sufficient opportunity the litigants for the same. Whiles, upon perusal of the records, this courts finds that the summons was duly served on the petitioner herein and not denied by her. However, there is no material on record to suggest that the Petitioner had intentionally delayed

her appearance in this OS despite knowledge. The reason for absence is clearly stated as the medical illness. Hence, this court considers that the lacuna on the part of the petitioner to appear after receipt of the notice appears to be not intentional or covered with malafide. Hence, this court considers that another opportunity shall be granted to her despite the lack of vague reasoning. Also to show bonafide the written statement is filed with this petition.

9. Hence, this Courts considers that this Court shall adopt a liberal approach and finds that the reason quoted by the Petitioner are attributable as sufficient cause to set aside the exparte order dated 05.06.2023. Further, another opportunity shall be provided to the Petitioner/respondent to contest the petition on merits in the interest of justice and the exparte order has to be set aside.

10. The suit being of the year 2022 and was in the stage of judgment, when this petition is filed. As such, the instant petition having been filed at this stage of judgment has caused inconvenience to the Respondent/Plaintiff herein. Considering the above discussions and the inconvenience caused by this Petition, this Court finds it reasonable to order a sum of Rs.2000/- to be paid by the Petitioner to the respondent herein.

RESULT :-

In the result, this Petition is allowed and the exparte order dated 05.06.2023 against this Petitioner in OS No.177 of 2022 is set aside, on the condition that the Petitioner shall pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the Respondent on or before 18.03.2026. Call on 18.03.2026.

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 12th day of March 2026.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM

Petitioner and Respondent side witness and document : NIL

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM