

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI

Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)

Additional District Munsif, Kulithalai.

Dated Wednesday, the 18th day of June 2025

I.A No.01/2025 in O.S No.26/2025

Santhanam

...Petitioner /Defendant

- Vs -

Mookkan

...Respondent/ Plaintiff

This petition has come up on 12.06.2025 for final hearing before this court in the presence of Mr.K.S.M.Sahul Hameed, learned counsel for the Petitioner/Defendant and Mr.V.Chinnasamy learned counsel for the Respondent/Plaintiff and upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

1. This petition has been filed by the Petitioner/Defendant under Order 9 Rule 7 of CPC to set aside the exparte order passed against the Defendant dated 03.03.2025.

Brief averments in the Affidavit:

2. The petitioner states that he is the defendant in the above suit. The above suit was filed by the Respondent/Plaintiff for the relief of partition. As of now, the above suit was posted for the chief continuation of PW1. But, on 03.03.2025 when he was called in the open Court, on which date the health condition of the Defendant/Petitioner herein was not good. Due to the same, the petitioner could not be able to appear before this Court. On the said date, due to the non-appearance of the Petitioner/Defendant in the above suit before the Court, the Petitioner/Defendant

was set exparte. The non-appearance of the Petitioner/Defendant in the above suit was not an intentional one and the same is forgivable. That the Defendant has a good case in the above suit. That the Defendant had come to know about the status of the exparte order only after getting recovered from his illness through his counsel. In the interest of justice this petition is necessary to be allowed else the Petitioner would be put to irreparable loss and hardships. Hence this petition.

Brief averments in the Counter filed by the Respondent :-

3. The respondent states that the allegations contained in the affidavit are not true and they are to be proved by the Petitioner herein. That the Petitioner/Defendant very well knows that on 03.03.2025 he has to appear before this Court for the above suit. But, knowing the same, the Petitioner/Defendant had wantonly non appeared on the said date. The reason stated by the Petitioner that he was not well on the said date is not true. For the name sake, the said reason has been stated in the petition. This petition has been filed in order to delay the proceedings. Hence, this petition is not sustainable and is liable to be dismissed.

Point for determination:

4. Whether the petitioner is entitled to the relief sought for in this petition?

Evidence:

5. No oral and documentary evidence were adduced on either side.

Point:

6. This petition has been preferred by the Petitioner/Defendant in order to set aside the exparte order passed against him in the above suit dated 03.03.2025. It is the case of the petitioner that on the date when he was called in the above suit, he was not well and he had a bad health condition, for which the Petitioner/Defendant could not come to court and hence he was set exparte in the above suit. It was also stated in the petition that the reason for the non-appearance of the petitioner in the above suit

was not an intentional one. It was also contended that the petitioner, after having recovered from his illness only, had come to know about the status of the case through his counsel. Hence he prayed for setting aside the exparte order dated 03.03.2025 in this petition.

7. On the other hand, it is the case of the respondent in his counter that the reason stated by the petitioner was not true and for the name sake, such reason has been given by the petitioner. He also stated that this petition has been filed in order to delay the proceedings. Further, he stated that knowingly the petitioner failed to appear before this Court on the said date even after knowing that the above case was posted on 03.03.2025 for hearing. Hence, the respondent prayed for the dismissal of this petition.

8. Be that as it may, this court, on careful perusal of the petition, the accompanying affidavit and the submissions of both parties, is of the view that it is an established principle of natural justice that no party should be condemned unheard and effort must be made to ensure that the disputes are adjudicated on their merits rather than on technicalities, unless the conduct of the party demonstrates a deliberate intent to obstruct justice. Whereas, Order 9 Rule 7 of CPC provides that when the court has adjourned the hearing of the suit exparte and the defendant, at or before such hearing assigns good cause for his previous non-appearance, he may upon such terms as the court directs, be heard. Being so, the reason stated by the Petitioner/Defendant for not appearing before this Court on the hearing date, after receiving summons which was due to his poor health condition, is a good cause and moreover, it was not specifically objected by the respondent.

9. Hence, for the reasons above stated and in the interest of justice, this court is inclined to set aside the exparte order. At the same time, from the perusal of records it is seen clear that the respondent who is the Plaintiff in the above suit has been put to inconvenience caused by the petitioner's failure to act promptly. Hence, to balance

the equities, this court deems it fit to impose costs on the petitioner as a condition for allowing this application.

Result

Accordingly, this petition is allowed. The exparte order dated 03.03.2025 passed against the Petitioner/Defendant is hereby set aside. The petitioner shall pay a cost of Rs.500/- to the Respondent/Plaintiff on or before 24.06.2025, failing which this order shall stand automatically vacated.

Directly dictacted to my Steno-typist, taken notes by her, transcribed by her in the Court Computer, corrected by me and pronounced by me in this open court on this 18th day of June 2025.

Sd/-A.Yughathymariya
Additional District Munsif,
Kulithalai.

Petitioner side witness and documents	-	Nil.
Respondents side witness and documents	-	Nil.

Sd/-A.Yughathymariya
Additional District Munsif,
Kulithalai.

