

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI
Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)
Additional District Munsif, Kulithalai.
Dated Tuesday, the 19th day of August 2025
I.A No.05/2024 in I.A.No.4/2023 in O.S No.154/2021

Malaiyandi

...Petitioner

- Vs -

1) Rajalingam

2) Thirumudi @ Ayyer

...Respondents

This petition has come up for final hearing on 30.07.2025 before this Court in the presence of Mr.A.Jaffer Shet, the Learned Counsel appearing for the Petitioner and in the presence of Mr.R.Krishnasamy, the Learned Counsel appearing for the Respondents upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition has been filed by the Petitioner under Order 9 Rule 7 r/w section 151 of CPC to set aside the exparte order passed against him dated 24.04.2024 in I.A.No.4/2023 in O.S.No.154/2021.

Brief averments in the Affidavit:

2. The petitioner is the Respondent in I.A.No.4/2023 in the above suit. On 24.04.2024, when the above Interim Application was posted for counter of the Respondent/Petitioner herein, in another Interim Application which was filed along with the above suit, this Petitioner has filed counter and was about to file counter in I.A.No.4/2023, but unexpectedly, the Petitioner was set exparte in the above petition. In the above petition, the act of this Petitioner in not filing counter was not an intentional one and in the interest of justice, this petition is necessarily to be allowed. If this petition is not allowed, the Petitioner will be put to irreparable loss and hardships. Hence, this petition.

Brief averments in the Counter statement of the Respondents:

3. This petition is unsustainable. No explanation was stated by the Petitioner for not filing his counter in the above interim application. In order to drag on the case proceedings, this petition has been filed. Hence, this petition is liable to be dismissed with costs.

Point for determination:

4. Whether the Petitioner is entitled to the relief as prayed for or not?

Evidence:

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

Point:

6. Heard. Perused records. Upon perusal, it is seen that this Court has passed an exparte order against the Petitioner in the above interim application in I.A.No.4/2023 on 24.04.2024. It is also seen that in the above interim application, the chance for filing of counter was given to the Respondent/Petitioner herein on several occasions and in several dates from 16.02.2023 to 24.04.2024. It is seen that more than a period of one year was given for filing counter on the side of the Respondent in the above petition. Despite more than sufficient opportunities given, the Petitioner/Respondent therein had failed to file counter and hence this Court has rightly set the Petitioner exparte on 24.04.2024.

7. The contention of the Petitioner herein for not filing his counter in the above petition is that he has filed counter in another petition which was filed along with the above suit and he was about to file his counter and unexpectedly this Court has passed the said exparte order. Therefore, the Petitioner prayed this Court to allow this petition in the interest of justice. Per contra, the major objection placed on the side of the Respondent is that no proper explanations were stated by the Petitioner and they objected this petition on the ground that in order to drag on the case proceedings, this petition has been filed.

8. This court, on careful perusal of the affidavit and the counter and the submission of both parties, is of the view that the reason stated by the Petitioner for not filing counter in the above interim application despite sufficient opportunities given to him, is not found sufficient. However, it is to be noted here 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.

9. It is seen that the Petitioner herein had not filed his counter in the above petition for more than a period of one year and he has caused inconvenience to the Respondents herein by dragging on the above petition by not filing counter and thereby consumed the huge time of this Court as well. Therefore, this Court is of the view to allow this petition with a condition of payment of cost by the Petitioner, by condoning the said delay in the interest of justice, in order to avoid any technical irregularities.

Result

Accordingly, this petition is allowed to meet out the ends of justice. The exparte order passed against the Petitioner herein in I.A.No.4/2023 in O.S.No.154/2021 dated 24.04.2024 is hereby set aside. The Petitioner is hereby directed to pay a cost of Rs.500/- to the Respondents herein on or before 29.08.2025, failing which this order shall stand automatically vacated.

Dictated to my Steno-typist, directly typed by her in the Court computer, corrected and pronounced by me in this open court on this the 19th day of August 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.

