

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI

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

Additional District Munsif, Kulithalai.

Dated Monday, the 23rd day of June 2025

I.A No.09/2025 in O.S No.174/2022

1) Shanmugam

2) Palaniammal

3) Saravanan

4) Krishnan @ Veerapathran ...Petitioners/Defendants No.3 to 6

- Vs -

Muthulakshmi

...Respondent/ Plaintiff

This petition has come up on 12.06.2025 for final hearing before this court in the presence of Mr.V.R.Balasubramanian, learned counsel for the Petitioners/Defendants No.3 to 6 and in the presence of Mr.K.Sakthivel, 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 3rd Petitioner/Defendant No.5 on behalf of other Petitioners/Defendants No.4 to 6 under Order 9 Rule 13 of CPC to set aside the exparte Judgment and Decree passed against the Defendants No.3 to 6 in the above suit dated 14.03.2024.

Brief averments in the Affidavit:

2. The 3rd petitioner states that he is the 5th defendant in the above suit and he is filing this affidavit on behalf of the other Petitioners/Defendants No.4 to 6 in the above suit. He has stated that in the above suit, these Petitioners/Defendants No.3 to

6 were properly appearing before this Court. He also stated that the above suit was posted for filing of written statement of the defendants No.3 to 6. While so, when the petitioners asked the 1st Defendant in the above suit regarding the case status, the 1st Defendant had told him that the Plaintiff/Respondent herein is the daughter of the 1st Defendant, that the 1st Defendant will ask her daughter to withdraw the above suit and hence he told the petitioners that there is no necessity for this petitioners to proceed with the suit. Hence, on believing the words of the 1st Defendant, the petitioners had not approached their counsels.

3. The petitioners were on the bonafide belief that the plaintiff would have withdrawn the above suit and hence failed to know about the case status of the above suit. That the counsel for the petitioners informed them that the above suit was decreed exparte against the petitioners on 14.03.2024 and it would affect the rights of the petitioners. Due to the work nature of the petitioners and the other family circumstances, the petitioners could not be able to initiate further proceeding in the above suit. A delay of 174 days which was occurred in setting aside the said exparte judgment and decree, was not an intentional one. That the petitioners are having good case in the above suit. If the said exparte judgment and decree dated 14.03.2024 are not set aside, the petitioners will be put to irreparable loss and hardships. Hence this petition.

Brief averments in the Counter Statement filed by the Respondent/Plaintiff:-

4. The Respondent/Plaintiff states that the allegations contained in the affidavit are not true and they are to be proved by the Petitioners herein. That the Petitioners/Defendants No.3 to 6, very well know that they have to appear before this Court for the above suit for filing of written statement. But, they have to not appeared before this Court, they were set exparte and an exparte judgment was pronounced by this Court in the Open Court on 14.03.2024. The petitioners have filed this petition with much delay with a malafide intention that justice not to be delivered in favour of the Plaintiff/Respondent. If this petition is allowed, the

Plaintiff/Respondent herein would be put to irreparable loss and hardships. Hence, this petition is liable to be dismissed.

Point for determination:

5. Whether the petitioners are entitled to the relief sought for in this petition?

Evidence:

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

Point:

7. This petition has been preferred by the Petitioners/Defendants No.3 to 6 in order to set aside the ex parte judgment and decree passed against them in the above suit dated 14.03.2024. It is the case of the petitioners that when the above suit was posted for filing of written statement of the Defendants No.3 to 6, the petitioners herein were under the guise and believed the words of the 1st Defendant that the 1st Defendant would ask her daughter who is the plaintiff in the above suit to withdraw the case against the Petitioners/Defendants No.3 to 6. Due to which, the petitioners have not approached their counsels to get to know about the case status and proceed to file the written statement.

8. The petitioners also stated that the plaintiff in the above suit had not withdrawn the suit and that petitioners were set ex parte and an ex parte judgment and decree was pronounced by this Court on 14.03.2024, which facts were not known to them and subsequently get to know about the same, only through their counsel. Hence, they prayed this Court to set aside the above said ex parte judgment and decree by condoning the delay of 174 days in preferring this petition due to the work nature and other family circumstance of the petitioners.

9. On the other hand, the Respondent /Plaintiff in his counter has stated that the petitioners very well know about the status of the above case and they very well

know about that on 14.03.2024 an ex parte judgment and decree were passed against them by this Court. Despite knowing the same, this petition has been filed with much delay and with a malafide intention that justice not to be delivered in favour of the plaintiff/ Respondent. Hence, he prayed for the dismissal of this petition.

10. This court, on careful perusal of the petition affidavit, counter statement 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 13 of CPC provides that when a decree is passed ex parte against the defendant and if the defendant satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him.

11. The term “ Sufficient Cause” is not precisely defined anywhere in the Code of Civil Procedure and it has to be decided by the Court on a case-by-case basis. It is the discretionary power of the Court to determine whether the cause shown by the Defendant is indeed sufficient. Generally, the Court will interpret the term sufficient cause liberally, to ensure that the parties are not unfairly deprived of their right to be heard and to prevent injustice.

12. Being so, the reason stated by the Petitioners/Defendants No. 3 to 6 for not appearing before this Court on the hearing date and not filing written statement which was due to the bonafide belief of the words of the 1st Defendant that her daughter who is the 1st Plaintiff would withdraw the suit and the other reason stated for the delay in preferring to file this petition to set aside the ex parte judgment and decree, which was due to the work nature and other family circumstances of the petitioners, are found sufficient. For the above facts, there was only an evasive denial made by the

respondent in his counter and there was no specific objection made. Hence, this Court had taken a liberal interpretation of the term “Sufficient Cause” in applying it to the present case on hand, in the interest of justice. This court is also of the view that if this petition is allowed, it would no way prejudice the rights of the Respondents.

13. Hence, for the reasons above stated and in the interest of justice and on merits, this court is inclined to set aside the exparte judgment and decree passed against the Petitioners/Defendants No.3 to 6 herein dated 14.03.2024. 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 inconveniences caused by the petitioners’ failure to act promptly. Hence, to balance the equities, this court deems it fit to impose costs on the petitioners as a condition for allowing this application.

Result

Accordingly, this petition is allowed. The exparte judgment and decree dated 14.03.2024 passed against the Petitioners/Defendants No.3 to 6 is hereby set aside. The Petitioners shall pay a cost of Rs.500/- to the Respondent/Plaintiff on or before 02.07.2025, failing which this order shall stand automatically vacated.

Dictacted to my typist, directly typed by her in the Court Computer, corrected by me and pronounced by me in this open court on this the 23rd day of June 2025.

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

Petitioners side witness and documents - Nil.
Respondent side witness and documents - Nil.

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

