

**IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.****Present : Thiru. M.P. Ramkishore, B.E., BL., (Hon's)**

District Munsif, Vadipatti

Dated this the 08th day of October 2025**IA. No.02/2025****in****O.S. No.120/2021**

S. Perumal,
S/o. Subramani

---- Petitioner / D1

//Versus//

1. Thavasi,
S/o. Samayan
2. R. Rakku,
W/o. Andi

---- Respondents / Plaintiffs

This petition was filed before this Court on 20.03.2025 coming before me for final hearing on 08.10.2025, Advocate Thiru. R. Vijayagopal appeared for the Petitioner /D1, and Advocate Thiru. Vellaichamy appeared for the Respondents / Plaintiffs. Upon hearing the arguments advanced on both sides, upon perusing the available material records, this Court has delivered the following....

ORDER

1. This petition was filed under order 9 rule 7 of C.P.C. to set aside exparte order dated 02.02.2023 against the petitioner / D1.

2. Petition averments in brief:

The petition contention was that, the petitioner was the defendant in the main suit. On 02.02.2023, the main case was posted for filing written statement on that day as the petitioner was continuously suffered by stomach issues due to his old age, the petitioner was unable to meet his counsel to file his written statement on that day. Thereby, the petitioner was set ex-parte in the main case. The petitioner was willing to contest the main case else he shall be put to serious hardship. Hence the petitioner / 1st defendant filed this petition, to set aside the ex-parte order passed against him on 02.02.2023.

3. Counter averments in brief:

The respondents / plaintiffs filed counter by denying the entire petition contentions and stated that the petition ground was false. This petitioner was acting to protract the case and filed this petition after a long delay. The respondents were ready to proceed with the trial, at that time this petition was filed. Thus, this petition must be dismissed.

4. Point for determination : Whether this petition can be allowed?

i. Heard both sides. Admittedly, the petitioner / 1st defendant was set ex-parte in the main suit on 02.02.2023 and he filed this petition to set aside the ex-parte order. The respondents / plaintiffs had objected the petition stating it was filed on false grounds to drag on the case.

ii. In this juncture, this court relies upon the judgment of **our Hon'ble Supreme Court in Sangram Singh -vs- Election Tribunal, Kotah and others (AIR 1955 SC 425)**as;

“ We have seen that if the defendant does not appear at the first hearing, the Court can proceed ex-parte, which means that it can proceed without a written statement; and Order IX, rule 7 makes it clear that unless good cause is shown the defendant cannot be relegated to the position that he would have occupied if he had appeared. That means that he cannot put in a written statement unless he is allowed to do so, and if the case is one in which the Court considers a written statement should have been put in, the consequences entailed by Order 8, rule 10 must be suffered....” . “.....What those consequences should

be in a given case is for the Court, in the exercise of its judicial discretion, to determine. No hard and fast rule can be laid down. In some cases an order awarding costs to the plaintiff would meet the ends of justice: an adjournment can be granted or a written statement can be considered on the spot and issues framed. In other cases, the ends of justice may call for more drastic. ”

In the light of the above mentioned dictum of our Hon’ble Supreme Court, in order to contest the case the petitioners / 1st defendant can be permitted to file written statement even with delay by imposing cost. Thus even though the reason stated by the petitioner was not convincing to cause such a long delay in filing this petition, as directed by our Hon’ble Supreme Court an opportunity can be given to him to contest the case.

iii. Following the above referred dictum of our Hon’ble Apex Court in the case in hand, this court is of the view that inspite of the delay on the part of the petitioner / 1st defendant in filing written statement to provide fair opportunity to the parties, this petition can be allowed to set aside the ex-parte order.

5. In the result, the petition is allowed, with cost of Rs.500/- (nominal cost imposed by considering the old age of the petitioner) payable to the respondents / plaintiffs counsel on or before next hearing in the main suit.

Dictated to the Steno Typist typed by her directly on the computer, corrected and pronounced by me in the open court this the *08th day of October 2025*.

District Munsif,
Vadipatti.

Petitioner side evidence and document : Nil

Respondents side evidence and document : Nil

District Munsif,
Vadipatti.

DISTRICT MUNSIF COURT
Vadipatti
FAIR ORDER /~~DRAFT ORDER~~
IA. No.02/2025
in
O.S. No.120/2021
Date : 08.10.2025