

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, MAYILADUTHURAI.

Present: Thiru P.Elango, B.Sc., M.L.,  
Additional District Judge  
Thursday, the 2nd day of March 2023  
IA 2 of 2022 in OS 4 of 2022

...

1.Ganesan  
2.Banumathi  
3.Prema

... Petitioners / Defendants No.1, 2, 5

Vs

Seetharaman

... Respondent / Plaintiff

This petition is coming up before me on 20.02.2023 in the presence of Tr. G.T.Mani advocate for the petitioners and Tr. S.Balasubramanian, advocate for the respondent and upon hearing both side and considering the connected records, this Court made the following

#### ORDER

This petition is filed under O9 R7 CPC seeking exparte order set aside.

1. The averments of petition as follows:

The petitioner / D1 filed affidavit on behalf of himself and D2 and 5. That on 24.02.2022 the suit was posted for filing vakalat for the petitioners. But due to the death of relative to the petitioners, the documents relating to the suit could not be given to their counsel and therefore the counsel for the petitioners could not file vakalat and hence the petitioners were set exparte. Therefore the petitioner prays to set aside the exparte order passed against the petitioners on 22.04.2022 (as mentioned in the affidavit)

2. The averments of counter in short:

The averments of petition is not sustainable in law and fact. The all averments of the petition affidavit are false and it has to be proved by the petitioners. The petitioners filed this petition with intention to drag on the matter. The petitioners purposely leaving the matter for exparte and there after filed this petition. Hence it is not at all sustainable. Further this petitioners failed to file their written statement along with this petition. Therefore the respondent prays to dismiss the petition with cost.

3. The points for determination is:

Whether the petitioners were entitle for the prayer as sought for?

4. Solution:

The petitioners side stated that the suit was posted for the appearance of petitioners / defendants on 24.02.2022. The relative for the petitioners was died and therefore they could not hand over the documents relating to the suit to their counsel and hence the counsel for the petitioners could not file vakalat for the petitioners. Therefore the petitioners were set exparte on 24.02.2022 and hence the petitioners prays to set aside the exparte order passed against them. In this situation the petitioners side stated date of exparte in one place of the affidavit as 24.02.2022 and in another place they mentioned the date of exparte as 22.04.2022. It shows that the petitioners filed this affidavit and petition without knowing the correct date of order of exparte. In this situation the petitioners were actually set exparte on 24.02.2022. The petitioner side further stated due to death of their relative and relevant documents could not be handed over to their counsel and hence he could not file vakalat on the above said hearing date. But at the same time what are the documents could not be given to the counsel on 24.02.2022 also not in specific. In this situation the petitioners filed this petition seeking to set aside the exparte order on 17.08.2022. In spite of the petitioners

side knowing the date of hearing in advance they failed to appear. In this situation they filed this application only after passing of several months. It shows that the petitioners with intention to drag on the matter leaving the matter for exparte and after that filing this kind of petition as objected by respondent side. Even though this petitioners appeared through their counsel and filed this petition as stated above, they failed to file their written statement along with this petition. In considering all above circumstances the reasons stated by the petitioner side is no way acceptable. At the same time by considering the interest of justice it is decided to offer one more opportunity for the petitioner and also decided to dispose the dispute on merit subject to below mentioned condition.

In result on deposit of Rs.3,000- (Rs.1,000- by the each petitioner) by the petitioners to the DLSA, Nagapattinam and on filing of written statement on or before 13.03.2023 this petition is allowed. Failing which this petition stands dismissed. Call on 14.03.2023.

Dictated to the steno-typist, transcribed and computer typed by her and corrected and pronounced by me in the open Court today this the 2nd day of March 2023.

Additional District Judge,  
Mayiladuthurai.

Order: (Fair & Draft)  
I.A. No.2/2022 in  
O.S No.4/2022  
Dated: 02.03.2023