

IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM

Present: **Thiru. L.PRAKASH, B.Sc., B.L.,**
DISTRICT MUNSIF, UDHAGAMANDALAM.

Wednesday, the 17th day of December 2025

I.A. No. 06 of 2025
in
I.A. No. 03 of 2025
in
O.S. No. 36 of 2025
(C.N.R. No. TNNS030 - 00070 - 2025)

H.T. Chandran

... Petitioner/Respondent No. 1

/VS/

1. Janaki

... Respondent/Petitioner

2. C. Arunkumar

... Respondent/ Respondent No. 2

This petition came on 19.11.2025 for final hearing before me in the presence of Mr. A. Naveen Kumar, learned Counsel for the Petitioner and of Mr. B. Nepoliyan, learned Counsel appearing for the 1st Respondent/Plaintiff and the Respondent/Respondent No. 2 remains as formal party, upon hearing both sides and upon considering case records carefully, this court passes the following

ORDER

1. This petition is filed Under Order IX Rule 7 R/w Section 151 of the Code of Civil Procedure, praying to set aside the exparte order passed against the petitioner/ 1st Respondent in I.A. No. 03 of 2025 above.

Gist of Petition and affidavit:

2. The brief averment of petition is that, the petitioner is the 1st respondent

in the Commission application in I.A. No. 03 of 2025 and 1st defendant in the main suit, the respondent/plaintiff filed a petition under Order 26 Rule 9 of C.P.C. for appointment of an Advocate Commissioner to inspect and report on the petition mentioned property, the matter was posted for appearance of parties on 02.06.2025, but the petitioner/ 1st respondent could not attend the court on that date due to his illness, although his son, the 2nd respondent was appeared, and he was called absent and set exparte on 02.06.2025 due to his non appearance.

3. The petitioner states that his lack legal knowledge and he was unaware of the consequences of non-appearance and asserts that failure to attend the court was not intentional or negligent and occurred due to bonafide circumstances. In fact, the summons appear to have been served at a time when he was bed rest as advised by the Doctors and also aged about 78 years old, and he was set exparte only in the above circumstances. Unless the exparte order dated 02.06.2025 is set aside would cause irreparable loss and hardship. Hence, prays to set aside the exparte order dated 02.06.2025 in I.A. No. 03 of 2025.

Gist of Counter statement of 1st Respondent:

4. On the other hand, the 1st Respondent in her counter statement submitted that, the petition is false, frivolous and vexatious and unsustainable in law or on facts. The respondent contents that the petitioner's claim of illness and inability to attend the court on 02.06.2025 is absolutely false by without filing any supporting documents, the 2nd respondent could have obtained the petitioner's signature and engaged an Advocate on that date. The 1st respondent further asserts that, the petitioner has no experience or knowledge in legal aspects are misleading and false, since the 2nd respondent resides with the petitioner, appeared in court on the said date and can explain about the legal aspects. Further the petition is not filed within the stipulated time as per law and therefore the petition is not maintainable and liable to

be dismissed in limine.

Discussion:

5. Heard the learned counsels appearing on either side and perused the materials available on record. The point for determination in this petition is that, whether this petition is liable to be allowed or not? This petition is filed to set aside the ex parte order against the petitioner/1st respondent in the above I.A. No. 03 of 2025 dated 02.06.2025. It is not in dispute that the petitioner was set ex parte for non-appearance on 02.06.2025. It is also seen from the records that the petitioner had earlier filed I.A. No. 04 of 2025 and I.A. No. 05 of 2025 on 19.06.2025 and on 01.07.2025 to set aside the ex parte order in the main suit and in I.A. No. 03 of 2025, the said petitions were not pressed due to defects in the cause title of the petition. Then the present petition has been filed on 18.09.2025 to set aside the ex parte order in the above I.A. No. 03 of 2025. In the meanwhile, the 2nd Respondent/2nd defendant has appeared before this Court and filed his written statement, and the suit is now at the stage of framing of issues as against the 2nd defendant.

6. The explanation offered by the petitioner for his non-appearance on 02.06.2025 is that he was suffering from illness and was advised bed rest. The petitioner is an 78 years old, aged person. Though the respondent has disputed the same and pointed out the absence of medical documents, it is well settled that, while considering a petition under Order IX Rule 7 C.P.C., the Court has to adopt a liberal approach so as to afford an opportunity to the party to contest the matter on merits, unless deliberate negligence or mala fides is established.

7. In the present case, the ex parte order was passed at the initial stage of the suit and the interim application. No serious prejudice would be caused to the respondents if the ex parte order is set aside, whereas refusal to do so would deprive the petitioner of an opportunity to put forth his defence. The reasons assigned by the

petitioner appear to be bona fide.

8. In view of the above facts and circumstances, this Court is of the considered view that sufficient cause has been shown for the petitioner's non-appearance on 02.06.2025. Accordingly, this court inclines to allow this petition, subject to the reasonable cost to the respondent/plaintiff for the delay caused due to the petitioner/1st defendant in the proceedings.

RESULT

9. *In the result this petition will be allowed on payment of cost Rs.500/- (Rupees Five Hundred only) to the 1st Respondent/Plaintiff on or before 13.01.2026. On such payment, the ex parte order dated 02.06.2025 passed against the Petitioner/1st Respondent in I.A. No. 03 of 2025 in O.S. No. 36 of 2025 will be set aside and the Petitioner/1st Respondent will be permitted to contest the suit on merits.*

10. *The Petitioner/1st Respondent is further directed to appear before this Court on the next date of hearing and to file his counter statement in the above I.A. No. 03 of 2025, if not already filed, within the time stipulated by law. No further adjournment shall be granted on the same ground.*

11. *For compliance, call on 13.01.2026.*

This order is dictated to the steno - typist, typed by her in computer, corrected by me and pronounced by me in the open court on this 17th day of December 2025.

**District Munsif,
Udhagamandalam.**

Draft/Fair Order:

**I.A. No.06/2025
in
I.A. No. 03/2025
in
O.S. No. 36/2025**

Dated: 17.12.2025

**District Munsif Court,
Udhagamandalam.**