

IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM

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

Tuesday, the 24th day of March 2026

I.A. No. 07 of 2026
in
O.S. No. 01 of 2016
(C.N.R. No. TNNS030 - 00003 - 2016)

M/s. Udhagamandalam Municipality,
Rep. by its Commissioner, Municipal Office,
Udhagamandalam, The Nilgiris.

...Petitioner/Defendant No. 2

/VS/

L. Kumar, S/o. Mr. R. Lingan

... Respondent/Plaintiff

/VS/

1. R. Lingan (Since Deceased)

2. Jayamma (Since Deceased)

3. Latha (Since Deceased)

4. Rani

5. Priya

6. Rukmani

7. Meena

8. L. Devaraj (Since Deceased)

... Respondents/Defendants

This petition came on 13.03.2026 for final hearing before me in the presence of Mrs. K. Menega, learned Counsel for the Petitioner/Defendant No. 2 and of Mr. K. Chandra Mohan, learned Counsel for the Respondent/Plaintiff, upon considering case records carefully, this court passes the following

ORDER

1. This petition is filed under Order IX Rule 7 of the Code of Civil Procedure, praying to set aside the ex parte order dated 31.03.2022 passed against the petitioner/2nd defendant and to permit the 2nd defendant to file the written statement and contest the suit on merit.

Gist of Petition and affidavit:

2. The Commissioner of the 2nd defendant states in this affidavit that, the above suit was filed in the year 2016 and the Municipality was originally represented by the previous standing counsel, due to administrative reasons, a change of standing counsel, and a lack of proper coordination, the written statement for the Municipality was not filed. Consequently the Court set the 2nd defendant ex parte on 31.03.2022. The present counsel was unaware of the ex parte order when they took over the case. The non-appearance and non-filing of written statement were neither willful nor wanton, but due to the above said reasons. The municipality argues they have a substantial and lawful defense regarding the grant and cancellation of building license and the exercise of statutory powers. If the ex parte order is not set aside, the Municipality would suffer serious prejudice and irreparable loss, the municipality is ready to file the written statement and participate in the proceedings without delay. Hence, prays to set aside the ex parte order dated 31.03.2022 passed against the 2nd defendant and permit the Municipality to contest the suit on merits.

Counter Statement:

3. On the other hand of respondent/plaintiff side endorsed no counter for this petition. Hence, the respondent/plaintiff has not filed any counter for this petition.

Points for consideration:

4. Heard the enquiry of the petitioner's side, petition and case records perused carefully. The point that arises for consideration in this petition is that, (i) whether the petitioner/2nd defendant has shown sufficient cause for his non-appearance on 31.03.2022, when he was set ex parte; (ii) whether the petition filed under Order IX Rule 7 of the Code of Civil Procedure at this stage, after completion of trial, is maintainable; and (iii) whether the petitioner/2nd defendant is entitled to have the ex parte order dated 31.03.2022 set aside and to be permitted to file written statement and contest the suit on merits.

Discussion:

5. On perusal of the records, it is seen that the 2nd defendant was set ex parte on 31.03.2022 for non-appearance and non-filing of written statement. Despite sufficient opportunities given, the 2nd defendant did not file the written statement and set ex parte on 31.03.2022.

6. It is seen from the records that the suit has been filed in the year 2016 for the relief of declaration and consequential permanent and mandatory injunction. The present petitioner, who is the 2nd defendant, was set ex parte on 31.03.2022. Thereafter, the trial of the suit commenced and the examination of witnesses on both sides has been completed. It is further seen that the 2nd defendant, without filing any petition to set aside the ex parte order and without filing written statement, had participated in the trial proceedings and cross-examined the witnesses on the side of the plaintiff as well as the other defendants. It is the specific case of the petitioner that such participation was made without knowledge of the ex parte order. At this stage, after closure of evidence on both sides, the present petition has been filed along with the written statement and documents.

7. Though the petition has been filed at a belated stage, it is pertinent to

note that the 2nd defendant has already participated in the trial by cross-examining the witnesses on both sides. Further, the respondent/plaintiff has not opposed this petition and has endorsed no objection. Therefore, it cannot be said that any serious prejudice would be caused to the respondent/plaintiff by allowing this petition. It is also relevant to note that the suit is one for declaration, wherein the plaintiff seeks to declare that the cancellation of building approval made by the 2nd defendant is null and void, along with consequential reliefs. In such circumstances, the presence and defence of the 2nd defendant, being a statutory authority, are essential for effective and complete adjudication of the issues involved in the suit. The reason assigned by the petitioner that the present counsel was not aware of the ex parte order, and that the 2nd defendant had participated in the trial proceedings without such knowledge, appears to be acceptable in the facts and circumstances of the case.

8. Considering the above aspects and in order to afford an opportunity to the 2nd defendant to put forth its defence and to ensure that the matter is decided on merits, this Court is inclined to allow this petition, subject to conditions.

9. In the result, this petition is allowed, and the ex parte order dated 31.03.2022 passed against the petitioner/2nd defendant is hereby set aside. The written statement and documents filed by the 2nd defendant are received, subject to all just exceptions.

10. The respondent/plaintiff is at liberty to recall any witness, if necessary, for the purpose of further cross-examination in view of the written statement now filed by the 2nd defendant.

Result:

11. In the result, the petition is allowed. The ex parte order dated 31.03.2022 passed against the petitioner/second defendant is set aside. The written statement filed by the petitioner/second defendant is ordered to be received. There shall be no order as to costs.

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 the 24th day of March 2026.

**District Munsif,
Udhagamandalam.**

Draft/Fair Order:

I.A. No. 07/2026
in
O.S. No. 01/2016

Dated: **24.03.2026**

**District Munsif Court,
Udhagamandalam.**