

**IN THE COURT OF THE DISTRICT MUNSIF, ARAKKONAM,
RANIPET DISTRICT**

PRESENT: Selvi. A.Ameena.,BBA.,LLB(Hons).,

DISTRICT MUNSIF, ARAKKONAM

Tuesday, the 30th day of April 2025

I.A.No.02/2024

in

OS.No. 43/2009

1. Munirathinam

- Petitioner/Plaintiff

/Versus/

1. Jothirathinammal,
2. Nagarathinammal,
3. Jeevarathinammal (Died),
4. Kamalakannan,
5. Valli,
6. Mohan,
7. Yasotha,
8. Vijayalakshmi,
9. Veeraragavana.

- Respondents/Defendants

This Petition came up for final hearing before me on 30.04.2025 in the presence of Mr.K.S.K.Nepolian Counsel appearing for petitioner and Mr.R.Saravanan Counsel appearing for 1st respondant and 3rd Respondent, R3 died. R2, R4 to R9 are Set Exparte on 27.03.2025 upon hearing both side arguments and on perusal of entire case records having stood over for consideration till this day, this court has delivered the following:-

ORDER

This Petition is filed by the petitioner under order 9 Rule 7 of CPC to set aside the exparte order passed against the respondent on 19.01.2024.

1. Brief averments in the petition:-

1.1 The petitioner, who is the ninth defendant in the original suit, has filed an application to set aside the exparte order passed against them on 19.01.2024. The respondents had prayed for a permanent injunction against the petitioner in the original suit. The petitioner was added as the ninth defendant through an interim application (IA No. 1 of 2023) dated 18.02.2023. On 19.01.2024, the case was adjourned to allow the petitioner to file their written statement. However, the petitioner was unable to attend court due to stomach pain and subsequently did not file their written statement.

1.2 Furthermore, in July, the petitioner met with an accident while walking in the village, resulting in a fracture to the left leg bone. The petitioner underwent treatment at Puthur Hospital and was advised by the doctor not to walk. Additionally, the petitioner's wife was unwell, and due to their old age and living alone, they were unable to contact their counsel. When the petitioner finally approached their counsel, they discovered that an exparte order had been passed against them on 19.01.2024. The petitioner claims that their absence from court was not willful and that they are seeking to set aside the exparte order. Hence petition is filed to set aside exparte hearing.

2. Brief averments of the counter:

2.1 The respondent denies the allegations made by the said petitioner . Further, the 1st respondent/plaintiff in this case has filed an original suit against the 2nd to 9th defendants and against this petitioner and in the said case the petitioner has filed an interlocutory petition no. 1/2023 . As per the order dated 01.08.2023, he was included as the 9th respondent in the original case and in the original suit, the petitioner has been given an opportunity to file a written statement on 19.01.2024. But failed to file the written statement .

2.2 The respondent denies that on the day the petitioner was unable to appear before the court due to severe diarrhea and his non-appearance on that day was not willful or willful and while the petitioner was walking on the road in his village in the month of July, a person on a two-wheeler drove the vehicle at high speed and recklessly and hit the petitioner and there was an accident and the petitioner suffered a fracture in his left leg. It will take days to meet and they advised him not to go out. In the meantime, the petitioner's wife has become ill and in old age, Petitioner and his wife are living as an orphan with their children with great difficulty.

2.3 On 19.01.2024 the Exparte order has been passed and therefore the petitioner has asked to immediately file a petition to quash the Exparte order and now he has filed a written statement in the original case with this petition and therefore prayer to set aside exparte order is not maintainable. This respondent denies that the petitioner has said that the exparte order passed against the petitioner on 19.01.2024 in this case should be set aside in view of the fact that the petitioner is now 78 years old and the accident happened to the petitioner.

2.4 Further, as stated by the respondent, the petitioner has not submitted any documents or medical treatment documents regarding the severe diarrhea suffered by the petitioner, the accident that occurred to the petitioner and the ill health of the petitioner's wife, and the respondent prays that the petition is not maintainable in law and should be dismissed.

3.Point for consideration:

3.1 Whether this petition is to be allowed or not?

No oral and documentary evidence adduced on both sides.

3.2 Heard both sides. Perused the records. This petition is filed to set aside the exparte order dated 19.01.2024 against the petitioner. The petitioner have stated that he was suffering from stomach pain subsequently met with an accident and was undergoing medical treatment. Further the petitioner's wife was not well and hence was unable to meet his counsel and file written statement. After recovery he met the

counsel and came to know about the exparte order. Whereas the Respondent has stated in the counter that the reason stated is not sufficient cause and no documents were adduced by petitioner that he met with an accident. Hence prayed petition is liable to be dismissed. On perusal of records it could be seen that the petitioner was served summons and they entered appearance through counsel by filing Vakalat and the case was posted for filing written statement from 15.09.2023 to 19.01.2024 though sufficient time was given, written statement not filed and hence the petitioner/ 9th defendant was set exparte on 19.01.2024. Hence this petition is filed to side aside exparte order.

3.3 The petitioner/ 9th defendant has stated the he was suffering from stomach pain subsequently met with an accident and was undergoing medical treatment . But the petitioner has not stated about his treatment details. Similarly only the reason for non-appearance of petitioner/ 9th defendant is stated no documents were adduced. Though the reason stated is vague in nature, this court is of considered opinion that both parties should be given fair opportunity to contest the case on merts. Considering the facts that written statement is filed along with this petition. This Court is of opinion that this petition can be allowed and no prejudice would be caused to the respondents. Hence in the interest of justice, this court is inclined to allow this petition.

In the result, this petition is allowed. No costs.

Dictated to stenographer directly, typed in her computer corrected and pronounced by me in the Open court on 30th day of April 2025.

District Munsif,
Arakkonam.

Petitioner side witnesses and Exhibits :- -NIL-

Respondent's side witnesses and Exhibits :- -NIL-

District Munsif,
Arakkonam.