

IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.

Present : Tmt. L. Kalaivani, B.A.,B.L.,
 III Additional District Judge,
 Salem.

 Monday, the 16th day of December 2024

I.A.No.2/2023
 in
 O.S.No.41/2023

P.Settu ... Petitioner/Defendant
 /Vs/

T Gandhi ... Respondent / Plaintiff

This petition is coming on 05.12.2024 before me for final hearing in the presence of Thiru. P.Arularasu learned counsel for the petitioner and Thiru.D.Rajasekaran learned counsel for the respondent, upon hearing the both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed Under Order 9 Rule 7 and section 151 of CPC to set aside the exparte order passed against the petitioner in the suit.

1. Brevity of the petition is as follows:

The petitioner herein is the Defendant in the suit and the suit has been filed by the Respondent seeking the relief of specific performance and other consequential reliefs. The suit is posted on 05.06.2023 for filing of written statement by the petitioner. But, the petitioner was affected by Viral fever and he could not able to move out of his house to give instructions to the counsel for preparing written statement. Therefore, due to the non-appearance of the

petitioner and also non filing of written statement he was set exparte on 05.06.2023. The non filing of Written statement by the petitioner is neither willful nor wanton. The petitioner has got good merits to succeed the suit. Thus, the petitioner has come forward with the present petition to set aside the exparte order.

2. The counter filed by the respondent is as follows:

The respondent had denied the averments stated in the petition except that those are specifically admitted by him. It is false to state that the petitioner was affected by the viral fever and thus, he could not able to file his counter on 05.06.2023. The petitioner has not produced any medical certificate to show his ailment. There are no merits in this petition. Hence, it is prayed for dismissal.

3. Now the point for consideration is:-

Whether this petition is liable to be allowed or not?

4. Answer to the Point:

Heard the both sides and perused the material available on record. A perusal of above would reveal the fact that the petitioner herein is the defendant in the suit and the suit has been filed by the respondent seeking the relief of specific performance and other consequential reliefs. An exparte order was passed against the petitioner on 05.06.2023 in the suit. Now, the petitioner has come forward with the present petition to set aside the exparte order.

5. The petitioner would contend that the suit was posted on 05.06.2024 for filing written statement by the petitioner. But, the petitioner was suffered by severe viral fever and thus, he could not able to file written statement on

05.06.2023. Consequently, an exparte order was passed against the petitioner. Per contra, the respondent would contend that the reason stated by the petitioner for the non filing of written statement 05.06.2024 is not true and in order to delay the proceeding the present petition has been filed.

6. Ongoing through the records it could be seen that the case was posted on 05.06.2024 for the filing of written statement and the petitioner has not filed the written statement on 05.06.2024. Therefore, the petitioner was set exparte in the suit. It is true that the petitioner has not produced any medical records to show his ailment. But, the non production of the medical records is not a ground to reject the claim of the petitioner. Moreover, the reason stated by the petitioner for the non filing of written statement is convincing. In this regard, this court observed that as far as possible, Court's discretion should be exercised in favour of hearing and not to shut out hearing. The Hon'ble Apex Court also observed in its judgment reported in **1978 ARC 496 (SC) Ramji das vs Mohan Singh** that the settled view of law on this aspect it is that under the technicality the litigant is not to be estopped from conducting his case on merits. Added to it, mere failure on the part of the petitioner his rights to conduct the case cannot be curtailed in the threshold.

In the result, the petition is allowed subject to the payment of cost Rs.750/- to the respondent on or before 21.01.2025 failing which the petition will be dismissed.

Dictated to the Steno-Typist directly, computerized by her, corrected and pronounced by me in the open court on 16th day of December, 2024

(Sd/-L.Kalaivani)

III Additional District Judge,
Salem.

Fair/Draft Order in
I.A.No.2/2023 in
O.S.No.41/2023
Dt. 16.12.2024
III ADJ.,Salem.