

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

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

Thursday, the 27th day of March 2025.

**I.A.3/2024
in
AS. No.6/2021**

N. Rajendiran ...Petitioner/respondent

/Vs/

1. N. Sengottuvelu(Died)
2. Sangeethapriya
3. Praveenkumar
4. Vishnupriya

...Respondents/Appellants

This petition is coming on 07.03.2025 before me for final hearing in the presence of Thiru.L.Raja, learned counsel for the petitioner and Thiru.S.Sivasankar, learned counsel for the respondents, upon hearing the arguments of both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed by the petitioner Under Order 41, Rule 19 read with section 151 of CPC to set aside the exparte order.

1. Brief case of the petitioner is as follows:-

The petitioner herein is the 4th respondent in the appeal suit and the appeal suit has been filed by the respondents herein as against the judgment and decree passed by the Subordinate court, Sankari in OS.No.156/2012 dated 25.09.2019. Notice was served to the petitioner in the appeal suit for the hearing on 08.04.2021. But, the petitioner did not

appear before the court on 08.04.2021. Hence, an ex parte order was passed against the petitioner. The appeal was originally prepared by the 1st respondent herein who is the brother of the petitioner and he was only looking after the same. But, the 1st respondent was died during the pendency of appeal on 02.06.2021 due to the infection caused by the Covid-19 virus. Therefore, the 2nd to 4th respondents who are the widow and children of the 1st respondent have impleaded in the appeal suit. The petitioner was under the firm belief that the 1st respondent would prosecute the appeal and thus, he has not appeared before the court which leads an ex parte order. The non-appearance of the petitioner on 08.04.2021 is neither willful nor wanton. Hence, the petitioner has come forward with the present petition.

2. Nutshell of the counter filed by the 2nd respondent and adopted by other respondents is as follows:-

The respondents have denied the averments stated in the petition except that those are specifically admitted by the respondents. The averments in the 1st to 3rd paragraph are admitted by the respondents. But, the averments in the 4th paragraph are denied. An ex parte order was passed on 08.04.2021 in the appeal suit for non-appearance of the petitioner. It is always imperative on the part of the parties to the proceeding to be diligent and careful in looking after the appeal from day one and the petitioner is not expected to depend on the deceased respondent. There are no sufficient cause stated in the petition to set aside the ex parte order and the petitioner deliberately failed to appear before this court. Hence, it is prayed for dismissal.

3. Now the point for consideration is:-

Whether the petition filed by the petitioner is to be allowed or not is to be decided.

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 4th respondent in the appeal suit and appeal suit has been filed by the respondents as against the decree and judgment passed in OS.No.156/2012 dated 25.09.2019. The petitioner was set exparte in the appeal suit on 08.04.2021. Now, the petitioner has come forward with the present petition to set aside the exparte order.

5. The petitioner would contend that notice was served to the petitioner in the appeal suit for the hearing on 08.04.2021. But, the petitioner did not appear before the court on 08.04.2021. Hence, an exparte order was passed against the petitioner. Moreover, the appeal was originally prepared by the 1st respondent herein who is the brother of the petitioner and he was only looking after the same. But, the 1st respondent was died during the pendency of appeal on 02.06.2021 due to the infection caused by the Covid-19 virus. Therefore, the 2nd to 4th respondents who are the widow and children of the 1st respondent have impleaded in the appeal suit. The petitioner was under the firm belief that the 1st respondent would prosecute the appeal and thus, he has not appeared before the court which leads an exparte order. Per contra, the respondents would contend that the reason stated by the petitioner for his non-appearance on 08.04.2021 is not true and in order to delay the proceeding the present petition has been filed.

6. Upon perusal of the records it could be seen that the case was posted on 08.04.2021 for appearance of the petitioner. But, he has not appeared on 08.04.2021. Therefore, the petitioner was set exparte in the appeal suit. The reasons stated by the petitioner for his non-appearance

are 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. On the same time there is a delay on the part of the petitioner in filing this petition and thus, sufferance caused to the respondents also taken in to consideration.

In the result, the petition is allowed subject to payment of cost of a sum of Rs.1500/- to the respondents on or before 21.04.2025, failing which the petition will be dismissed.

Dictated to the Steno-typist typed by her directly, corrected and pronounced by me in the open court, this the 27th day of March 2025.

(Sd/-L.Kalaivani)
**III Additional District Judge,
Salem.**

Fair/Draft Order in
IA.No.3/2024 in
AS.No.6/2021
Dt. 27.03.2025
III ADJ., Salem.