

IN THE COURT OF THE II ADDITIONAL DISTRICT COURT, SALEM.

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

Monday, the 2nd day of September, 2024.

I.A.02/2024

in
O.S.36/2021

Dhanam

.. Petitioner/4th Defendant

/Vs/

1. Eswaran

2. Govindaraj

.. Respondents/Plaintiffs

This petition is coming on 20.08.2024 before me for final hearing in the presence of Thiru.P. Paramasivam, learned counsel for the Petitioner and Thiru.C.Karunakaran, learned counsel for the Respondents, 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 of CPC to set aside the exparte order dated 30.09.2022 passed against the petitioner.

1. Brevity of the petition is as follows:

The petitioner herein is the 4th defendant in the suit and the suit has been filed by the respondent. The suit property is the self occurred property of the petitioner. The case was posted on 30.09.2022 for filing written statement by the petitioner. But, due to the ailment of the petitioner she could not able to give instruction to her counsel to file the written statement.

Consequently, an exparte order was passed against the petitioner. Hence, the petitioner has come forward with the present petition to set aside the exparte order.

2. Nutshell of the counter filed by the 1st respondent and adopted by the 2nd respondent is as follows:

The respondents have denied the averments stated in the petition except that those are specifically admitted by them. It is false to state that due to the ailment of the petitioner she could not able to file the written statement on 30.09.2022. In order to delay the proceedings the present petition has been filed. 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 both sides and perused the material available on record. A perusal of above would reveal the fact that the petitioner herein is the 4th defendant in the suit and suit has been filed by the respondent/plaintiff seeking the relief of partition and other consequential reliefs. The petitioner was set exparte in the suit on 30.09.2022. Now, the petitioner has come forward with the present petition to set aside the exparte order.

5. The petitioner would contend that due to the illness of the petitioner, she could not able to give instructions to her counsel to file written statement and consequently, the petitioner was set exparte in the suit on 30.09.2022. Per contra, the respondent would contend that the reason stated by the petitioner for the non filing of written statement on 30.09.2022 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 30.09.2022 for appearance of the petitioner and filing written statement by

the petitioner. But, she has not filed written statement. Therefore, the petitioner was set *ex parte* in the suit. It is true that the petitioner has not produced any medical certificate to show the ailment of the petitioner. However, the reasons stated by the petitioner for the non appearance and non filing of written statement 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, her 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.1,000/- to the respondents on or before 18.09.2024, 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 02nd day of September, 2024.

II Additional District Judge,
Salem.