

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

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

Saturday, the 05th day of April 2025.

**I.A.No.1/2024
in
O.S.No.571/2024**

Kalaivani

...Petitioner/ 3rd Defendant

/Vs/

1. Shanthi

2. Jegannathan

3. Megala

...

Respondents/Plaintiffs

This petition is coming on 05.04.2025 before me for final hearing in the presence of Thiru.T.Murugesan, learned counsel for the petitioner and Thiru. P.Ashok, 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 and section 151 of CPC to set aside the exparte order passed against the petitioner/ 3rd Defendant.

1.Brevity of the petition is as follows:

The petitioner herein is the 3rd defendant in the suit and the suit has been filed by the respondents seeking relief of partition and other consequential reliefs. The case has been posted on 30.08.2024 for the

appearance of the petitioner. But, the petitioner was pregnant and as advice by the doctor the petitioner has taken complete bed rest for one month. Therefore, the petitioner could not able to meet her counsel and file vakalath in the suit. Therefore, an exparte order was passed against the petitioner 30.08.2024. The non-appearance of the petitioner and non filing of written statement is neither willful nor wanton and 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.Nutshell of the counter filed by the 1st respondent and adopted by the 2nd and 3rd respondents 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 due to the pregnancy the petitioner has taken complete bed rest as advised by the doctor and therefore, she could not able to appear before this court. The petitioner has not produced any medical certificate in support of the averments made in the petition and the reason stated by the petitioner for her non-appearance is not true. 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:

The petitioner herein is the 3rd defendant in the suit and the suit has been filed by the respondents seeking relief of partition and other consequential reliefs. The petitioner was set exparte on 25.07.2024.

Now, the petitioner has come-forward with the present petition to set aside the exparte order passed against her.

5. The petitioner would contend that the case has been posted on 30.08.2024 for the appearance of the petitioner.. But, the petitioner was pregnant and as advice by the doctor the petitioner has taken complete bed rest for one month. Therefore, the petitioner could not able to meet her counsel and file vakalath in the suit. Therefore, an exparte order was passed against the petitioner 30.08.2024. Per contra, the respondents would contend that the petitioner wantonly failed to appear before this court on summon and the reason stated in the petition for the non-appearance is not true.

6. Upon perusal of the records it could be seen that the case was posted on 25.07.2024 for the appearance of the petitioner and the petitioner has not appeared before this court on 25.07.2024. Therefore, the petitioner was set exparte in the suit. However, the reasons stated by the petitioner for her 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, her rights to conduct the case cannot be curtailed in the threshold and on the same time sufferance caused to the respondents also taken into 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 28.04.2025 failing which the petition will be dismissed.

Dictated by me, to the Steno Typist, transcribed and computerized by her, corrected by me and pronounced in the open court, on this 05th day of April 2025.

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

Fair/Draft Order in
I.A.No.1/2024 in
O.S.No.571/2024
Dt. 05.04.2025