

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

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

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Thursday, the 05<sup>th</sup> day of June 2025

I.A.No.2/2025  
in  
O.S.No.714/2024

Thamarai Selvi

... Petitioner/5<sup>th</sup> defendant

/Vs/

Sankar

... Respondent/Plaintiff

This petition is coming on 21.04.2025 before me for final hearing in the presence of Thiru.N.K.Surulivel learned counsel for the petitioner and Thiru.J.Ferozz 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. Brief case of the petitioner is as follows:-**

The petitioner herein is the 5<sup>th</sup> defendant in the suit and suit has been filed by the respondent seeking the relief of partition and other consequential reliefs. The suit was posted on 07.01.2025 for filing of written statement. But, due to the illness of the petitioner she could not able to attend the court. The counsel for the petitioner was present before this court on 07.01.2025.

However, exparte order was passed hurriedly. The non appearance of the petitioner before this court on 07.01.2025 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. Nutshell of 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 the respondent. It is true that the case was posted on 07.01.2025 for filing of written statement. However, it is false to state that due to the illness of the petitioner she could not able to attend the court on 07.01.2025. In reality, the petitioner purposely allowed the suit for exparte and the reason stated in the petition are not acceptable one. 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:**

This petition has been filed by the petitioner who is the 5<sup>th</sup> defendant in the suit under order 9 rule 7 of CPC to set aside the exparte order passed against her on 07.01.2025. The petitioner would contend that the suit was posted on 07.01.2025 for filing written statement by her. But, the petitioner was suffered by illness and thus, she could not able to file written statement on 07.01.2025. 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 07.01.2025 is not true and in order to delay the proceeding the present petition has been filed.

5. Upon perusal of the records it could be seen that the case was posted on 07.01.2025 for the filing of written statement and the petitioner has not filed the written statement on 07.01.2025. Therefore, the petitioner was set exparte in the suit. It is true that the petitioner has not produced any medical

record to show her illness. However, 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 her rights to conduct the case cannot be curtailed in the threshold.

In the result, the petition is allowed subject to payment of cost of a sum of Rs.1,000/- to the respondent on or before 23.06.2025 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 05<sup>th</sup> day of June 2025.

III Additional District Judge,  
Salem.

Fair/Draft Order in  
I.A.No.2/2025 in  
O.S.No.714/2024  
Dt. 05.06.2025  
III ADJ.,Salem.