

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 01st day of February 2025

**I.A.No.1/2024
in
O.S.No.704/2023**

A.Marimuthu

... Petitioner/1st defendant

/Vs/

V Kandasamv

... Respondent/Plaintiff

This petition is coming on 24.01.2025 before me for final hearing in the presence of Tmt.N.Suganthi learned counsel for the petitioner and Thiru.D.Chandran 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 petitioners is as follows:-

The petitioner herein is the 1st defendant in the suit and suit has been filed by the petitioner seeking the relief of declaration and cancellation of agreement dated 25.01.2023. The suit was posted on 23.02.2024 for filing written statement and the written statement was also ready to file on 23.02.2024. However, due to the misconception of fact that the court was on leave on 23.02.2024 the petitioner has failed to file his written statement. Consequently, the exparte order has passed against the petitioner. 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. Nutshell of the counter filed by the respondent is as follows:-

The respondent had denied the avernments stated in the petition except that those are specifically admitted by the respondent. It is false to state that the written statement of the petitioner was ready to file on 23.02.2024. However, due to the misconception of fact that the court is leave on 23.02.2024. Consequently, the petitioner failed to filed written statement on 23.02.2024. In order to delay proceeding the present 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 1st defendant in the suit under order 9 rule 7 of CPC to set aside the exparte order passed against him on 23.02.2024. It is the contention of the petitioner that the suit was posted on 23.02.2024 for filing written statement and the written statement was also ready to file on 23.02.2024. However, due to the misconception of fact that the court was on leave on 23.02.2024 the petitioner has failed to file his written statement. Consequently, the exparte order has passed against the petitioner. On the other hand, the respondent would contend that the reason stated by the petitioner for non filing of written statement is not true and in order to delay the proceedings the present petition has been filed.

5. Having regard to the rival submissions it is noted that the suit was posted on 25.01.2023 for filing of written statement by the petitioner. But, he has not filed written statement as directed. Hence, an exparte order was

passed against the petitioner. However, the reasons stated by the petitioner for non filing written statement and also the delay in filing this application are convincing. Therefore, in order to provide an opportunity to the petitioner to prove his case this petition is liable to be allowed and on the same time sufferance cause to the respondent also taken into consideration.

In the result, the petition is allowed subject to the payment of cost Rs.1000/- to the respondent on or before 21.02.2025 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 01st day of February 2025.

sd/- L. Kalaivani,
III Additional District Judge,
Salem.