

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

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

Tuesday, the 28th day of January 2025

**I.A.No.1/2024
in
O.S.No.702/2022**

T.Martin

... Petitioner/Respondent

/Vs/

A S Celin Anthonystine Mary

... Respondent / Petitioner

This petition is coming on 07.01.2025 before me for final hearing in the presence of Tmt. V.Punitha learned counsel for the petitioner and Tmt.S.Subha 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. Brevity of the petition is as follows:

The petitioner herein is the Defendant in the suit and the suit has been filed by the Respondent seeking the reliefs of recovery of money. The suit was posted on 17.04.2023 for filing written statement by the petitioner. But, the petitioner was suffered by fever and thus, he could not able to file written statement. Consequently, an exparty order was 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. 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 him. It is false to state that the petitioner was affected by illness and consequently, he failed to file written statement on 17.04.2023. The petitioner has not produced any documents to show his illness. There are no merits in this petition and in order to harass the respondent 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 the both sides and perused the material available on record. A perusal of above would reveal the fact that the petitioner herein is the defendant in the suit. The suit has been filed by the respondent seeking the relief of recovery of money. An exparte order was passed against the petitioner on 17.04.2023 in the suit. Now, the petitioner has come forward with the present petition to set aside the exparte order.

5. The petitioner would contend that the suit was posted on 17.04.2023 for filing written statement by the petitioner. But, the petitioner was suffered by fever and thus, he could not able to file written statement on 17.04.2023. Consequently, an exparty 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 17.04.2023 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 17.04.2023 for the filing of written statement and the petitioner has not filed the written statement on 17.04.2023. Therefore, the petitioner was set exparte in the suit. It is true that the petitioner has not produced any medical record to show his 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 his 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 17.02.2025 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 28th day of January 2025.

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

Fair/Draft Order in
I.A.No.1/2024 in
O.S.No.702/2022
Dt. 28.01.2025
III ADJ.,Salem.