

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Present: Tmt. R. ELAMATHI, B.A., B.L.,
District Munsif Court, Sankari

Monday, the 11th day of August, 2025

I.A. 3/2024 in O.S.88/2018

The President, Vaikuntham Village
Panchayat, Sankari Taluk,
Salem District.

... Petitioner / 1st Defendant

//Versus//

1. Ayyamperumal
2. Lakshmi

... Respondents / Plaintiffs

This petition taken to file on 02.04.2024 and coming on this day 28.07.2025 for hearing before me in the presence of Thiru. R. Arulprakash (Government Pleader) for the Petitioner and of Thiru. A.Kailassanathan Advocate for the Respondents and after perusing the Petition, counter and hearing on both sides, this Court passed the following,

ORDER

This Interlocutory Application has been filed by the Petitioner/ 1st Defendant Under Order 9 Rule 7 and Section 151 of the Civil Procedure Code, 1908, seeking a relief of setting aside the exparte order against the Petitioner / 1st Defendant dated on 05.03.2024 due to non appearance.

2) The Gist of the petition:-

2.1) The petitioner submit that he is the 1st Defendant in the main suit and he is well aware of the facts and circumstances of the case.

2.2) The petitioner/ 1st Defendant submits that when the suit was originally filed as the special officer of Vaikuntam Grama Panchayat was appointed as the 1st Defendant. Subsequently, the petitioner / 1st Defendant

has been elected as the chairman of the said Panchayat. The Respondents/Plaintiffs thereafter filed a petition to substitute the panchayat chairman in the place of the special officer as the 1st Defendant in which petition was allowed. Accordingly, the petitioner/ 1st Defendant was required to appear before this court. On 05.03.2024, while the petitioner/ 1st Defendant was proceeding to this court, the petitioners Two-Wheeler Broke down, which caused an unavoidable delay in his arrival. Due to this, the petitioner/ 1st Defendant could not appear before this court on time and due his absence, this court passed an order treating him as exparte.

2.3) The petitioner/ 1st Defendant further submits that the said non-appearance was neither intentional non due to negligence, but solely on account of the unforeseen mechanical failure of his vehicle. Hence, this petition.

3) The Brief Averments of Counter filed by the 1st Respondent and the same was adopted by 2nd Respondent:-

3.1) The Respondents/Plaintiffs contends that the petition filed by the petitioner/ 1st Defendant is false, fraudulent and unsustainable either in law (or) in equity.

3.2) The Respondents/Plaintiffs contends that the 1st Respondent categorically denies the statements made in the petitioner's affidavit, except those expressly admitted and states that all other allegations are false and untrue.

3.3) The Respondents alleges that the above case was initially filed as the special officer of Vaikuntam Grama Panchayat included as the 1st Defendant. Subsequently, following the election of the chairman of Vaikuntam Grama Panchayat the petition was amended to include him as the 1st Defendant. The above case was filed on 05.03.2024, and the 1st

Defendant was permitted to file a counter-affidavit. The above circumstances mentioned in this regard are true.

3.4) The Respondents further contends that, however the petitioners claim in the affidavit that he could not appear before the court on time due to the breakdown of his two-wheeler while travelling to the court and that he was therefore set *ex parte* is completely false. The assertion that his absence was unintentional is also false and fabricated.

3.5) The Respondents/Plaintiffs further more alleges that the trial court had granted the 1st Defendant sufficient time and fixed 05.03.2024 as the final date for filing the counter-affidavit. The Petitioner/ 1st Defendant deliberately failed to file the counter-affidavit on that date, with a malicious intention to delay the proceedings. Consequently the trial court passed an *ex parte* order against him.

3.6) The Respondents/Plaintiffs strongly objects that the petitioner has not approached this court clean hands (or) true facts. The petition has been filed solely with the intent to protect the trial of the case. Hence this petition to be dismissed with exemplary cost.

4) No Oral and Documentary evidences were adduced on both sides.

5) Points for consideration:-

Whether the Petitioner/ 1st Defendant is entitled to the relief as prayed for?

6) Heard both sides learned counsels. Records perused. This Interlocutory Application has been filed Under Order 9 Rule 7 and Section 151 of Civil Procedure Code by the petitioner / 1st Defendant to set aside the *ex parte* order passed on 05.03.2024 due to his non-appearance. The Petitioner/ 1st Defendant submits that the main suit was originally filed as

the special officer of Vaikuntam Grama Panchayat as 1st Defendant. Subsequently, the petitioner / 1st Defendant was elected as chairman of Vaikuntam Grama Panchayat. The Respondents/Plaintiffs filed a petition to substitute the Panchayat Chairman in the place of the Special Officer as the 1st Defendant, in which the same was allowed. The Petitioner/ 1st defendant is required to appear before this court on 05.03.2024 while proceeding to attend the court, his two wheeler allegedly broke down, resulting in unavoidable delay. He submits that his absence was neither deliberate nor negligent, but due to unforeseen mechanical failure, he prays for setting aside the said order to enable him to participate in the trial and defend the suit on merits.

6.1) On the other hand, the Respondents/Plaintiffs contends that the plea is false and intended only to delay proceedings. They submit that sufficient time had been given earlier to file a counter-affidavit, with 05.03.2024 being the final opportunity. It is alleged that the petitioner/ 1st Defendant deliberately abstained from filing the counter and appearing in court, with malafide intent. They urge for dismissal of the application with exemplary cost.

6.2) Upon considering the contentions of both parties, this court is bound to cite certain landmark precedents of the Hon'ble Supreme Court **In Gyan Chand -Vs – Smt. Raj Kumari & Others 2023 SCC Online All 1230.** In this judgment, it was reiterated that an application under Order 9 Rule 7 is maintainable before judgment is delivered. The court stressed that sufficient cause must be shown for earlier absence.. The Hon'ble Supreme Court **In Sushil Kumar Sabharwal – Vs – Gurpreet Singh (2002) 5 SCC 377,** the Supreme Court emphasized “the provision does not provide a limitation period, but it certainly presupposes a duty upon the defendant to

act without unreasonable delay and with bona fides”. In the present case in hand, the petitioner / 1st Defendant reason as mechanical breakdown of his vehicle is prima facie plausible. The petitioner/ 1st Defendant was set exparte on 05.03.2024. The petitioner / 1st Defendant filed this Interlocutory Application on 05.03.2024 (i.e., on the same day). This court is of the view that there is no delay in filing this Interlocutory Application and the petitioner/ 1st defendant acted promptly. Denying him the opportunity to contest the suit may result in denial of natural justice, particularly the main suit is in trial stage and has not progressed to evidence.

7) In the light of the above findings, this Interlocutory Application is allowed. No cost.

This order directly dictated to the Steno-typist and typed by him and corrected by me, and Pronounced in the Open Court in the 11th day of August, 2025.

District Munsif,
Sankari.

Encl.:

Petitioner side Witnesses & Exhibits:- NIL

Respondents side Witnesses & Exhibits:- NIL

District Munsif,
Sankari.