

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

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

Thursday, the 05th day of June, 2025

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், வைகாசி திங்கள் 22 ம் நாள் வியாழக்கிழமை

I.A. 17/2023 in O.S.146/2014

Kandasamy ... Petitioner / 5th Defendant
//Versus//

1. Eswaran (died)
2. Anbarasu
3. Sellamuthu
4. Kandasamy (died)
5. Kalamani
6. Keerthivarman
7. Sowmiya ... Respondents / Plaintiffs

This petition taken to file on 28.11.2023 and coming on this day 24.04.2025 for hearing before me in the presence of Thiru. T. Dharmalingam, Thiru. S. Kuppusamy and Selvi. M. Abirami Advocates for the Petitioner and of Thiru. K. Kasilingam, Advocate for the Respondents No.2,3,5 to 7 and R1, R4 were died and after perusing the Petition, counter and both side arguments this Court passed the following,

ORDER

This Interlocutory Application has been filed by the Petitioner/ 5th Defendant Under Order 9 Rule 7 and Section 151 of the Civil Procedure Code, 1908 to set aside the exparte order passed against the petitioner in O.S.No.146/2014 on 29.07.2019.

2) The Gist of the petition:-

The petitioner submits that he is the 5th defendant in the suit in O.S.No.146/2014. The Respondents filed the suit for Declaration and the suit was posted to 16.11.2023 for Judgment. On 08.10.2014, the petitioner/

5th Defendant filed Vakalath and Written Statement with set aside petition. But petitioner/ 5th Defendant side vakalath was not registered. On 16.11.2023 the petitioner/ 5th Defendant filed a new vakalath with adoption memo for statement. On 29.07.2019 due to illness doctor advised the petitioner/ 5th Defendant to take full rest, in that time he could not able to contact his counsel. On that score, this court passed an order of exparte against the petitioner/ 5th Defendant. The petitioner/ 5th Defendant have got good defense in this case. The petitioner's counsel informed him about the date of posting. But due to illness the petitioner/ 5th Defendant could not able to inform about his illness. After recovery on 16.11.2023 the petitioner/ 5th Defendant met his counsel, he came to know that the petitioner/ 5th Defendant was set exparte on 29.07.2019. The petitioner/ 5th Defendant submits that he has got valid defence in the suit. Therefore, it is necessary to set aside the exparte order passed on 29.07.2019. Otherwise the petitioner/ 5th Defendant will be put to much of loss and hardship. Hence, this petition.

3) The Brief Averments of Counter filed by the 3rd Respondent/Plaintiff and adopted by Other Respondents:-

3.1) The Respondents contends that the petition is false, frivolous, vexatious and unsustainable in law and on facts, the respondents does not admit any of the allegations made in the affidavit except those which are specifically admitted and the petitioner's have strict proof of the same. The Respondents/Plaintiffs filed the above suit for declaration and Mandatory Injunction and other reliefs against the defendants. The Respondents/Plaintiffs averred that, it is false to state that the petitioner always ready to contest the above case, but due to illness and doctor advised the petitioner/ 5th Defendant to take full rest, hence they have not able to contact his counsel in time. It is false that petitioner / 5th defendant

have good defense in this case. There is no medical certificate produced to prove their illness and hence this petition is not maintainable. The petitioner/ 5th Defendant filed this petition 4th time to set aside the exparte order and recall and reopen the case.

3.2) The Respondents/Plaintiffs further submits that, on 04.08.2014 the petitioners 2 and 3 called absent set exparte and filed Order 9 Rule 7 application on 08.10.2014. The 1st respondent filed chief affidavit along with Order 7 Rule 14 (3) of C.P.C., petition I.A.No.1/2019 on 02.03.2019, on that day the petitioners and their counsel were not appear hence the petitioner sent copy of chief affidavit, said petition and affidavit through registered post to the petitioner's counsel and filed memo along with acknowledgment card on 13.03.2019. Notice of hearing sent and filed before this court on 12.04.2019. On 14.06.2019 the suit is posted for counter in I.A.No.1/2019, on that day the petitioners/defendants were called absent set exparty. On 18.11.2019 and 21.11.2019 the PW2 and PW3 were examined respectively and posted for judgment on 20.01.2020, 29.01.2020, 07.02.2020 and 19.02.2020. It is further submit that the respondents/plaintiffs filed Order 1 Rule 10 petition to implead father of the 1st plaintiff as 4th defendant in the above suit and also ordered to issue notice through court and post. On 09.02.2021 the said notice were served and Thiru T. Dharmalingam advocate filed Vakalatha for Respondents 6 and 7 / defendants 6 and 7 and 5th respondent called absent set ex-party. Again the above suit was posted to 07.07.2022 for judgment. Again the petitioners has filed Order 9 Rule 7, Order 18 Rule 17 and Section 151 of CPC in I.A.No.7/2022, I.A.No.8/2022 and I.A.No.9/2022 and the same were allowed by this court on 07.12.2022 on payment of cost. The petitioners/defendants again set ex-parte on 21.04.2023 for non examination of plaintiff side witness and non appearance of petitioners.

Again the petitioners filed this application to set aside the ex-parte order. The above suit was posted to 01.06.2023 for additional written statement on that day the petitioners were called absent set ex-parte. On 12.06.2023 the plaintiff side argument heard and posted for judgment on 15.06.2023. Now again the petitioners leave it set exparte wantonly and filed this application to drag on the proceedings.

3.3) The Respondents/Plaintiffs further more submits that the petitioners are well known about the exparte order. The reason stated in the affidavit are false and for the purpose of drag on the proceedings. The petitioners are watching each and every proceedings from outside the court and they were fully aware of the case proceeding. The petitioner filed this petition 3rd time to set aside the exparte order and 2nd time of recall and reopen petition to examine the Respondents/Plaintiffs side witness. The Respondents/Plaintiffs side witnesses PW1 to PW3 were examined and plaintiff side arguments heard and posted for judgment, in the mean time the petition is not maintainable in law. Therefore, the Respondents/Plaintiffs prays this court to dismiss the petition with cost.

4) No documents were marked on the side of the Petitioner/ 5th Defendant and Respondents/Plaintiffs.

5) Point for consideration:-

Whether the Petitioner/ 5th Defendant is entitled for the relief as prayed for?

6) Heard both sides. Records perused. The petitioner / 5th Defendant filed this Interlocutory Application under Order 9 Rule 7 of Civil Procedure Code, to set aside the exparte order passed against him on 29.07.2019 in O.S.No.146/2014. On perusal of records, it could be seen that the suit in O.S.No.146/2014 has been filed for the relief of Declaration and

Permanent Injunction. In this suit the petitioner is the 5th Defendant and the respondents are the Plaintiffs.

6.1) The Petitioner/ 5th Defendant contends that he was unable to appear before this court on 29.07.2019 due to illness and doctor advice to take rest and hence he could not contact his counsel in time. He claims that upon his recovery, he immediately approached his counsel and came to know that the case had proceeded exparte. He prays for setting aside the exparte order citing good defense on his side.

6.2) On the other hand, the Respondents/Plaintiffs have strongly opposed this Interlocutory application and submit that the petitioner has been habitually absent and this is his 3rd Application to set aside exparte order and 2nd Application to reopen and recall. Despite multiple opportunities and court indulgence, the petitioner failed to participate diligently. The illness is unsubstantiated with no medical certificate filed. The Respondents/Plaintiffs allege abuse of process and an attempt to drag the proceedings.

7) On careful consideration of facts and perusal of records, it could be seen that the Respondents/Plaintiffs filed the suit for Declaration and Permanent injunction against the Petitioners/Defendants in O.S.No.146/2014. On 29.07.2019 Petitioner/ 5th Defendant was set exparte due to illness, he could not able to appear before this court. On 29.07.2019 exparte order was passed against Petitioner / 5th defendant. Now this Interlocutory Application has been filed by the petitioner/ 5th Defendant to set aside the exparte order passed on 29.07.2019. But the Respondents/Plaintiffs contends that the petitioner/ 5th Defendant has not produced medical certificate to prove his illness. The petitioner is well

aware about the ex parte order, in order to drag on the proceedings he filed this petition without any valid reasons. The Respondents/Plaintiffs averred that the petitioner/ 5th Defendant filed 3rd time to set aside the ex parte order and 2nd time of recall and reopen petition to examine the Plaintiffs side witness.

8) After perusing the records this court is of considered opinion that, the Petitioner / 5th Defendant was set ex parte on 29.07.2019. He filed this petition on 28.11.2023. From 29.07.2019 to 28.11.2023, he has not took any steps to set aside the ex parte order which was passed against him. The reason given by the Petitioner / 5th Defendant was due to illness doctor advised him to take full rest, he was not able to contact his counsel in time. It would be pertinent to cite the Judgment of the **Hon'ble Supreme Court in "Arjun Singh -Vs – Mohindra Kumar AIR 1964 SC 993** "Order 9 Rule 7 applies before the judgment is passed. If the party appears after ex parte order but before judgment and shows good cause they can be allowed to participate". The **Hon'ble Supreme Court in Gyan chand -Vs – Smt. Raj kumari & 2023 SCC Online All 1230**. 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 the earlier absence. When comparing the case in hand with the above Hon'ble Superme Court Judgments. The Petitioner / 5th Defendant has not shown any sufficient cause for his absence. The reason for his non appearance is illness, but he not produced any medical certificate to prove the same. This court has not satisfied with the reason given by the Petitioner / 5th Defendant. Since the suit is for declaration and Permanent injunction which was filed in the year 2014. This court is of the considered opinion that the petitioner is the 5th Defendant in the main suit and even though, he has previously defaulted, this court must balance procedural discipline with

substantive justice. Dismissal of the petition would lead to denial of opportunity to defend, which may affect the petitioner's right irreparably. Hence, this court opinion that one more fair opportunity shall be given to the petitioner/ 5th defendant to defend his case. At the same time while considering the hardship caused by the petitioner/ 5th defendant this court is of the view that the hardship may be compensated by terms of costs. Therefore, for the above said reasons and without prejudice to both parties and in the interest of justice, this petition stands allowed on condition of payment of costs.

9) In the result, this petition stands allowed on condition that the petitioner shall pay a cost of Rs.1000/- (Rupees Thousand only) to the Respondents/Plaintiffs on or before 12.06.2025; failing which, this petition stands automatically dismissed. Call on 13.06.2025.

This order directly dictated to the Steno-typist and typed by him and corrected by me, and Pronounced in the Open Court in the 05th day of June, 2025.

District Munsif,
Sankari.

Encl.: - Nil-

District Munsif,
Sankari.