

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. 19/2023 in O.S.146/2014

1. Nachimuthu

2. N. Vijiya

... Petitioners / 6,7 Defendants

//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 Petitioners/ 6,7 Defendants Under Order 9 Rule 7 and Section 151 of the Civil Procedure Code, 1908 to set aside the exparte order passed against the petitioners in O.S.No.146/2014 on 21.04.2023.

2) The Gist of the petition:-

The petitioner submits that he is the 7th defendant in the suit in O.S.No.146/2014. The petitioner filed this petition for himself and on

behalf of other petitioner also. The Respondents filed the suit for Declaration and the suit was posted to 16.11.2023 for Judgment. The petitioner always ready to contest the above case, but due to illness doctor advised the petitioner 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 petitioners/6,7 defendants. The petitioners/6,7 defendants have got good defense in this case. The petitioner's counsel informed him about the date of posting. But due to illness the petitioner could not able to inform about his illness. After recovery the petitioner met his counsel, he came to know that the petitioners/6,7 defendants were set exparte on 21.04.2023. The petitioner submits that he has got valid defence in the suit. Therefore, it is necessary to set aside the exparte order passed on 21.04.2023. Otherwise the petitioners/ 6,7 Defendants 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 Vakkalatha 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 petitioners / 6,7 Defendants filed this Interlocutory Application under Order 9 Rule 7 of Civil Procedure Code, to set aside the exparte order passed against them on 21.04.2023 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 petitioners are the 6 & 7th Defendants and the respondents are the Plaintiffs.

6.1) The Petitioners/ 6,7 Defendants contends that the petitioner was unable to appear before this court on 21.04.2023 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 defence on his side and lack of negligence on his part.

6.2) On the other hand, the Respondents/Plaintiffs have strongly opposed that the 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 04.08.2014 exparte order was passed against 6th & 7th Petitioners/ 6th & 7th Defendants for non appearance. On 08.10.2014, Order 9 Rule 7 and Section 151 of Civil Procedure Code was filed and allowed on 13.07.2015. On 12.11.2019 exparte order was passed against all the defendants. The 6th & 7th Petitioners/ 6th & 7th Defendants filed an Interlocutory Application in I.A.No.7/2022 Under Order 9 Rule 7 to set aside the exparte order passed on 12.11.2019. I.A.8/2022 was filed Under Section 151 of C.P.C to reopen the case for cross examination of PW's. IA 9/2022 was filed under Order 18 Rule 17 to recall PW's for the purpose of

cross and the same was allowed with cost of Rs.500/- on 04.07.2023. Interlocutory Application was filed by 6th & 7th Petitioners/ 6th & 7th Defendants to set aside the exparte order against them on 21.04.2023. In I.A.No.11/2023, Under Order 9 Rule 7, I.A.No.12/2023, Under Order 18 Rule 17 and I.A.No.13/2023, Under Section 151 of C.P.C and the same was dismissed for default. Now the 6th & 7th Petitioners/ 6th & 7th Defendants has filed the Interlocutory Application on 28.11.2023 in I.A.No.19/2023 Under Order 9 Rule 7 to set aside the exparte order passed on 21.04.2023. The order passed in I.A.No. 11/2023, 12/2023 and 13/2023 are dismissed for default. The 6th & 7th Petitioners/ 6th & 7th Defendants ought to file Application for Restoration. But the Petitioners/Defendants filed Application Under Order 9 Rule 7. This court is bound to refer certain Judgments **In S. Sathyamurthy -Vs – Venkata Subbaiah 1981 (1) MLJ 350 (Madras High Court)** “When an I.A is dismissed for default, the remedy of the petitioner is to file a restoration application Under Section 151 of C.P.C. **In Samarendra Nath – Vs – Krishna Chandra AIR 1950 CAL 244.** A fresh petition on same ground is not maintainable after dismissal for default. The proper remedy is to restore the previous application

7.1) Considering the previous stages of the case, multiple opportunities had been given to the 6th & 7th Petitioners/ 6th & 7th Defendants to defend their case. Based upon the above discussion and the judgments of the Hon’ble Supreme Court and per contentions of Respondent/Plaintiff, this court is of the opinion that despite multiple opportunities and court indulgence, the 6th & 7th Petitioners/ 6th & 7th Defendants failed to participate diligently. The Petitioners/Defendants filed this I.A to drag on the proceedings. The reasons stated in the petition is not satisfied to this court.

8) In the result, this petition is Dismissed. 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 05th day of June, 2025.

District Munsif,
Sankari.

Encl.: - Nil-

District Munsif,
Sankari.