

The petitioner is the Defendant in the main case. The above suit O.S.No.215/2024 was filed by the Respondent/Plaintiff. On 23.07.2025 the case was posted for filing Written Statement. The plaintiff herein has filed the suit as party-in-person, pleading against the Petitioner with regard to certain documents, the petitioners needed to collect the documents to file a written statement. Further, the delay was caused to give para wise remarks to the pleader. Hence, Ex-parte order was passed against the Petitioner. Further the Petitioner states that his absence was not wanton and willfull and if this petition is rejected, they cannot prove their case on merits, and prayed to allow the petition.

3. The Concise Statement made in the counter filed by the Respondent/ party in person/Plaintiff is as follows :

The petition filed by the Petitioner is not maintainable either in law or on facts. The Petitioner is not entitled to any of the reliefs sought in the petition under law. Except those facts which are expressly admitted herein, all other allegations made in the affidavit filed by the Petitioners are denied as false. The petition is filed with false averments, contradictory statements against the TNEB rules. The Respondent/Party in person filed the counter denying each and every allegation found in the Written Statement filed by the Petitioners /Defendants on 09.09.2025 and prayed to dismiss the petition as it is protracting, delaying the main relief sought by the Respondent/Party in person in the suit.

4. No oral and documentary evidence let by both sides.

5. Point for consideration:

Whether this petition filed under Order IX Rule 7 of CPC is to be allowed or not?

6. Submissions, Discussions, Decisions with Reasons :

(6.1) Heard both sides, records perused. This petition filed to set aside the exparte order dated 23.07.2025. The grounds enumerated in the affidavit that the Petitioner needed to collect certain documents to file the Written Statement and give parawise remarks for the plaint averments to the Government Pleader. In this regard delay was caused. That on 23.07.2025 the absence of the Petitioners was not wanton and willful and prayed to allow the petition.

(6.2) Per contra, the Respondent/Party in person put forth his case that the Petitioners have willfully filed this petition to delay and to protract the final adjudication of the case. Further, he vehemently submitted that the affidavit is sworn in by the President, Chief Engineer/Hydro, TANGEDGO Annasalai, Chennai and

signed by the Assistant Executive Engineer/Mechanical /MTC /TANGEDGO, Periyar power house. There is no authorization by the President in favour of the Assistant Executive Engineer to file the affidavit and petition.

(6.3) It is pertinent to note, that the Written Statement was filed by the Defendants on 09.09.2025 along with this petition putting forth their defense. The Petitioners were set exparte on 23.07.2025 and this petition to set aside the exparte order filed on 09.09.2025 itself. There is no unexplained or inordinate delay in filing this petition to set aside the exparte order, but the petition is filed within 1½ months.

(6.4) The ground raised by the Respondent/Party in person that no authorization filed by the Petitioners authorizing the Assistant Executive Engineer to file the affidavit and the Written Statement. It remains undisputed that the Petitioners and the signatories to this affidavit, and the Written Statement, are government officials and they have been authorized to represent on behalf of the Government. They are the concerned authorities, though based on records, must have acquainted with the facts of the case to address the issue in this case. The petition under Order IX Rule 7 of the CPC and the Written Statement is signed by the Government Pleader who has vetted and approved the same in accordance with law on behalf of the Government Department. Hence, the signing of the affidavit by the Assistant Executive Engineer/ Mechanical is a technical flaw and may not stand as a hindrance to decide the application on merits.

(6.5) The application is filed not longer than 1½ months along with the Written Statement and the grounds raised in the affidavit are sufficient to give an opportunity to the Defendants. Further, the filing of Written Statement along with this petition would show that, the Petitioners/Defendants are showing their bonafide in conducting the case on merits. Our Hon'ble High Court of Madras in the case reported in 2010 (4) CTC Page 705, held that "no period of limitation has been prescribed for deciding an application to set aside exparte order, court should have liberal approach in considering the applications under Order IX Rule 7 of the CPC". As per the above

principle, this Court is of the view, that the court should have a liberal approach and being the Defendants, they shall be given an opportunity to take part in the proceedings at any stage of the proceedings.

(6.6) The suit for damages, claimed by the Respondent/Party in person against the Government. Opportunity should be given to either side to put forth their respective cases to avoid multiplicity of proceedings and meet the ends of justice. Hence, this court is inclined to allow this petition applying the principles of natural justice to give fair and sufficient opportunity of being heard based on the principle of 'audi alteram partem'.

7. Under the above said circumstances and in the interest of justice this petition is allowed on condition to pay costs of Rs.5,000/- to the Respondent/Party in person/ Plaintiff or to the deposit/credit of this court in the above suit on or before 09.07.2026, failing which the petition shall stand automatically dismissed. Call on 10.07.2026.

Dictated by me, directly typed by Steno-Typist into computer, corrected and pronounced by me in the open Court, this the 25th day of June 2026.

Additional District Judge,
Theni.

Petitioner and Respondent side Witnesses and Documents : - Nil -

Additional District Judge,
Theni.