

IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,  
TIRUPPUR.

Present :- Thiru. K.R.Kannan,B.A., B.L.,  
(J.O.Code.TN01220)  
Additional Subordinate Judge,  
Tiruppur.

Thursday the 27<sup>th</sup> day of February 2025

I.A. No. 3 / 2025

in

O.S.No. 614 / 2022

Prabhakaran

....Petitioner/ 3<sup>rd</sup> Defendant

//Vs//

Raguprakash

.... Respondent/Plaintiff

This Petition came before me on 14.02.2025 for the final hearing in the presence of Thiru.M.Manikandan,B.Com.,B.L., Advocate for the Petitioner/ 3<sup>rd</sup> Defendant and Thiru.N.Sathishkumar,B.A.,B.L., Advocate for the Respondent/Plaintiff and upon hearing both side arguments, and on perusal of available records, this court delivered the following...

**// ORDER //**

The petitioner who is the 3<sup>rd</sup> defendant filed this petition under Order IX Rule 7 and section 151 of CPC to set aside the *ex-parte* order passed against the 3<sup>rd</sup> defendant as per the reasons pleaded in the affidavit filed along with the petition as prayed for with cost.

**2. The averments stated in the affidavit filed by the petitioner is as follows:-**

- 2.1) The petitioner is the 3<sup>rd</sup> defendant in the suit. The petitioner came to know the plaintiff filed the suit against the petitioner.
- 2.2) The petitioner is permanently residing at Rajapalayam, Virudhunagar District on the date of purchase of the suit property. The petitioner is now residing at Anjurulipatti, Dindugul and permanently residing in that address from January 2022.
- 2.3) On 31.12.2024 the petitioner went to the 2<sup>nd</sup> defendant house and came to know the ex parte order passed against the petitioner and enquired the same through his advocate and on the proceedings of the e-Court.
- 2.4) The non appearance of the petitioner is neither willful nor wanton. The petitioner is having a good defense in the case. So, the petitioner asked this Court to set aside the ex parte order passed against the petitioner as prayed for in the petition.

**3. The objections raised by the respondent by way of counter statement is as follows :-**

- 3.1) The petition filed by the petitioner herein are false, frivolous, vexatious and the same is unsustainable either in law or on the facts of the case.
- 3.2) That the defendants had purposefully and wantonly with an malafide intention to drag the said case endlessly had filed this petition and the defendants are put to strict proof of each and every explanation stated by them in the above said petition.
- 3.3) It is more fully pertinent to be noted here that summons in the above said case summon has been served by this Honorable Court to this petitioner/ 3<sup>rd</sup> defendant on 8/3/2023.

3.4) It is humbly submitted that after a total of 15 hearing dates, the petitioner had not shown his appearance before this Honorable Court. Whereas after 15 hearings as the petitioner has not shown his appearance before this Honorable Court on 15/10/2024, this Honorable Court on 15/10/2024 had permitted the Respondent for substituted service i.e., to effect newspaper publication and by complying the same this Respondent had effected the newspaper publication on 15.11.2024 in "Makkal Kural-Madurai Edition" and the same has been submitted as proof before this Honorable Court on 17.12.2024. As the petitioner did not show his appearance before this Honorable Court on 17.12.2024 also, this Honorable Court on 17.12.2024 had set the petitioner exparte after giving enormous amount of opportunities for the petitioner to show his appearance before this Honorable Court.

3.5) It is settled proposition of law, that the petitioner has to explain and substantiate each and every day delay caused, that too to the satisfaction of this Hon'ble court. The petitioner/ 3<sup>rd</sup> Defendant who had not appeared before this Hon'ble court on various hearing either this in person or through his Advocate can't be allowed to put a blame blemish upon the court proceedings which was conducted in due process of law and asked this Court dismiss the petition with cost.

4) Both parties have not examined any evidence and no documents were marked on both side.

**5. Now the Point for consideration is whether this petition has to be allowed or not ?**

5.1) The petitioner is the 3<sup>rd</sup> defendant in the suit. The respondent is the plaintiff in the suit. The parties are discussed in this order as pleaded in the plaint.

5.2) The plaintiff filed the suit to declare the sale agreement in favour of the 2<sup>nd</sup> defendant and the sale deed in the name of 3<sup>rd</sup> defendant as null and void and further asked a permanent injunction not to disturb the peaceful possession and enjoyment over the suit property. On perusal of records after service of summons the 1<sup>st</sup> defendant was set exparte and the 2<sup>nd</sup> defendant appeared through counsel and filed the written statement. On, 08.03.2023 the summon's sent to the 3<sup>rd</sup> defendant was not duly served and the same was affixed. Then, by way of substituted service the 3<sup>rd</sup> defendant was set exparte on 17.12.2024.

5.3) It is true it is the duty of the 3<sup>rd</sup> defendant to explain and substantiate each and every day delay caused for the non appearance. As, per the affidavit filed by the 3<sup>rd</sup> defendant there is no whisper to that effect. But, as per records the defendant was set exparte by way of substituted service. Hence, in the interest of justice, in order to give a fair opportunity to the 3<sup>rd</sup> defendant to put forth his defense this Court is inclined to allow this petition with cost.

5.4) Hence, in the interest of justice and in order to give a fair opportunity to the 3<sup>rd</sup> defendant this petition will be allowed on condition with the 3<sup>rd</sup> defendant pay a sum of Rs.1,000/- (Rupees One Thousands only) as cost to the plaintiff on or before 06.03.2025. failing which this Condition, petition stands dismissed. Call on 06.03.2025.

Dictated to the Steno-Typist, typed by him directly into the computer, corrected, printed out and pronounced by me in the Open Court on this the 27<sup>th</sup> day of February 2025.

Additional Subordinate Judge,  
Tiruppur.

**I. Petitioner and Respondent's side Evidences and Documents : Nil**

Additional Subordinate Judge,  
Tiruppur.