

**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.**

Wednesday the 12th day of March 2025

I.A. No. 4 / 2024

in

O.S.No.428 / 2023

The Executive Officer,
Arulmigu Vishweswaraswamy,
Vishalakshiamman Subramaniasamy
Thirukovil Nallur

....Petitioner/ 1st Defendant

//Vs//

1. Kannammal

.... Respondent/Plaintiff

2. The District Revenue Officer, Tiruppur

.... Respondent/ 2nd Defendant

This Petition came before me on 14.02.2025 for the final hearing in the presence of Thiru.J.Sriram,B.A.,B.L., Advocate for the Petitioner/ 1st Defendant and Thiru.M.Mohammed Saleem,M.Com.,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 1st defendant filed this petition under Order IX Rule 7 of CPC to set aside the *ex-parte* order passed against the 1st 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 1st defendant in the suit. The petitioner came to know the plaintiff filed the suit against the petitioner.

2.2) The plaintiff has filed the above case to declare that the respondent/plaintiff is the title holder to the properties described in the plaint.

2.3) The petitioner is an government official. Since, the petitioner engaged in official work, the petitioner not meet advocate and arrange to file written statement. Hence, the 1st defendant was set exparte on 18.04.2024. The petitioner is neither wilful nor wanton. If the exparte order is not set aside 1st defendant will put to great and irreparable loss.

2.4) So, the petitioner asked this Court to set aside the exparte 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 affidavit filed by the Petitioner/1st Defendant is not acceptable under law.

3.2) 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.

3.3) The present affidavit is not maintainable. The CPC governs the rules for filing an affidavit in civil case and the affidavit must be written and sworn by the first person. In this affidavit, the name of the deponent not found. Without the person knowing the facts personally sworn, the affidavit filed by in a common official name of profession is not maintainable and liable to be rejected at the threshold.

3.4) The 1st Respondent / Plaintiff submits that an affidavit should be include the deponent's full name, father's name, profession and residence. In this case the name of the deponent not mentioned and it is an abuse of law. Hence the affidavit filed by the Petitioner Ist Defendant is liable to be rejected.

3.5) This 1st Respondent/Plaintiff without prejudice to the above stand submitted that the petitioner's temple cannot be claimed any excuse for the delay in filing the written statement in time as per the date predicted by this Hon'ble Court.

3.6) The petitioner/ 1st defendant's temple is a public institution governed by the Tamil Nadu H.R. & C.E. Act 22/1959, and managed by an Executive Officer appointed u/s 45 (1) of the H.R. & CE Act, along with the Board of Trustees appointed as per the provision of section 47, 48 and 49 of the HR & C.E. Act 22/1959 and with all kind of men power and sufficient staffs to administer the temple. Moreover this petitioner's institution also supervised by Gazetted Officers of H.R. & C.E. Department as provided U/s.8 of the H.R. & CE Act, and as such an office of the Joint Commissioner and Assistant Commissioner are functioning in Tirupur. Hence, the institution is running with the full machinery they have to be bound by the direction of this Hon'ble Court as per the provisions of the HR&CE Act and as per the provisions of the C.P.C. But in this case, even though this Hon'ble Court granted sufficient time and reasonable opportunity to the petitioner to file the written statement, after being blind eye for 2 years, now constrained to file this affidavit claiming to excuse the delay narrating false reasons. Moreover the reason that advanced is not conclusion and acceptable. The nature of the official duty that was assigned on the petitioner as alleged in para-3 of the affidavit not revealed clearly by day to day explanation.

3.7) It is also submitted that the Petitioner/1st Defendant was set-exparte on

18.4.2024 for the reason for not filing the written statement in time and now filed this delay excuse petition for 75 days. It is submitted that there were not any festivals or other Government engagement were falls within the above 75 days i.e., from 4.2.2024 to 18.4.2024. Even though the Petitioner / Ist Defendant was free from any engagement, he has not chosen to file the written statement in time and wilfully and wantonly by pervasion and disinterest and having no faith in the court of law.

3.8) This 1st Respondent/ Plaintiff therefore submit that because the affidavit filed is not in proper format are not disclosed proper and definite reasons acceptable for the delay in filing the written statement with the working details for each day of 75 days, the present Affidavit not sustainable under law and is liable to be rejected along with the Written Statement 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 executive officer of the temple and 1st 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 suit property absolute belonged to the plaintiff and further asked a relief of permanent injunction not to disturb the peaceful possession and enjoyment over the suit property. The 1st defendant temple appeared through counsel, counsel failed to file the written statement in time and so the 1st defendant was set ex-parte. Now, along with this petition written statement of 1st defendant is also filed.

5.3) The learned plaintiff counsel strongly opposed this petition and submitted the affidavit filed along with the petition is not in a proper form the same is not valid as per law. He, further submitted, as per HR & CE act the temple was duly represented by an executive officer and after gaining sufficient time as per the procedure laid down in CPC the 1st defendant failed to file the written statement in time. So, the learned plaintiff counsel strongly opposed this application and asked this Court to dismiss this application with cost.

5.4) On perusal of records, it is true this Court already granted more than 60 days to the 1st defendant to file the written statement. But, after availing the sufficient opportunities the 1st defendant failed to file the written statement in time.

5.5) Any have, in the interest of justice and in order to arrive a fair justice and a reasonable opportunity to be provided to the 1st defendant to prove his defense this Court is inclined to allow this petition on condition.

1. the 1st defendant is hereby directed to pay a sum of Rs.1,000/- (Rupees One Thousand Only) as cost to the plaintiff on or before 19.03.2025 failing which this petition stands dismissed. Call on 19.03.2025.

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 12th day of March 2025.

Additional Subordinate Judge,
Tiruppur.

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

Additional Subordinate Judge,
Tiruppur.