

**IN THE COURT OF THE DISTRICT MUNSIF, DHARAPURAM****Present : Ms. Mathivathani Vanangamudi, B.A.,L.L.M.,****District Munsif, Dharapuram****On this the 10<sup>th</sup> Day of November 2022, Thursday****I.A.No. 1569 of 2022 in O.S. No.134/2021**

M. Prabu

...Petitioner/1st Defendant

.Vs.

M. Angathal

...Respondent/Plaintiff

This petition came up for final hearing before me on 10.11.2022 in the presence of Mr. K.Karthik, B.A.,B.L., learned counsel for the petitioner and Mr. S. Palanisamy, B.A.,B.L., learned counsel for the respondent and upon hearing the arguments of both sides, perusing the case records and having stood over for consideration till this day, this Court delivers the following:

**ORDER**

The petition has been filed by the petitioner/1st respondent under Order 9 Rule 7 of CPC and Section 151 of CPC.

**1. Brief averments of the Petition:**

The petitioner states that when the suit is posted for first appearance on 22.03.2022, due to which leg fracture and the petitioner was advised to take bed rest. After the recovery the petitioner conducted the counsel and verified, came to know about the exparte order passed. The petitioner states that his non appearance is neither willful or wanton. If this petition is not allowed and

exparte order is not set aside the petitioner will be put to irreparable loss and hardship. Hence this petition.

**2. Brief averments of the Counter:**

The respondent/plaintiff filed counter stating that after serving summons the written statement of petition was not filed and he was stated that exparte on 08.10.2021. This petition is filed to delay the case. It is denied by the petitioner suffered from leg fracture and so he was unable to appear before this court. The reasons stated by the petitioner are all false. Hence prayed for dismissal.

**3. Point for consideration:**

Whether this petition can be allowed or not?

Heard both sides. Materials on record perused. On perusal of records it is seen that the vakalat of petitioner/1st defendant was filed in drop box on 12.07.2021 and the same was recorded on 24.08.2021. Subsequently, the case was adjourned for filing written statement on the part of defendants. On 22.03.2022 the petitioner /1st defendant fail to file written statement and so set exparte. Further, it is seen that all the other defendants remains exparte for non filing of written statement and the matter is pending for exparte evidence was taken and pending for arguments. The petitioner herein has filed the written statement along with the set aside petition. This court is of the opinion that sufficient opportunities is to be given to both sides to put forth their case. Though, no satisfactory reason is stated by the petitioner herein for non filing of written statement in order to provide an opportunity this court is inclined to

allow this application. Further, this court also deems fit that sufficient cost to be ordered to the petitioner/1st defendant for the delay caused by him to the respondent./plaintiff.

4. In the result, this petition is allowed on cost of Rs. 1,000/- payable to respondent /plaintiff on or before 13.12.2022. Failing which this petition is dismissed. For compliance call on 13.12.2022.

This order dictated by me to the Steno-Typist he directly typed it in the computer after corrections pronounced by me in the Open Court in the 10<sup>th</sup> day of November 2022.

(Sd.) **Ms. Mathivathani Vanangamudi**  
District Munsif,  
Dharapuram.

Petitioner side witness and Exhibits : Nil

Respondent's side witness and Exhibits : Nil

(Sd.) **Ms. Mathivathani Vanangamudi**  
District Munsif,  
Dharapuram.