

IN THE COURT OF THE DISTRICT MUNSIF JUDGE, PALLADAM

**Present:- Thiru. V. Kalidasan, B.Com., L.L.M.,
District Munsif, Palladam.**

Tuesday the 9th day of July 2024

I.A. No.2/2023

in

O.S.No.149/2022

The Thasildar, Palladam

... Petitioner/Defendant

/Vs/

1. Jeevanandham

2. Thangamani

3. Balathandayudham

... Respondents/Plaintiffs

ORDER

The petitioners filed this petition Under Order IX Rule 7 and Section 151 of CPC to set-aside the Ex-parte order passed in O.S.No. 149/2022 on 16.03.2023 against the petitioner.

This Petition is coming on 09.07.2024 for final hearing before me in the presence of Government Pleader Advocate for the Petitioner and Thiru.B.Mohan,B.A.,B.L.,Advocate for the respondents. Upon perusing the Petition, affidavit, counter statement and other connected material papers of record and hearing the arguments of both sides and having stood over till this day for consideration, this court made the following...

ORDER

1. Brief averments of the petition:-

The case of the petitioner herein is that he state that his assistant kept the court summon in another file. So he could not notice the court summon. For the reason, he was not able to attend the court in time. Meanwhile his Advocate,

Government Pleader had informed the petitioner that the defendant have been set-exparte on 16.03.2023 for non appearance with respect to the main suit. The petitioner absence to the court is neither willful nor wanton. But due to the above said negligence. If the suit is not Set Aside the exparte and dated 16.03.2023 he may be put to irreparable loss and injury. Hence, this petition.

2. Brief averments of the counter filed by the respondent:-

The case of the respondents herein is that the petitioner made an allegation is untrue. The averments contained in the affidavit that the assistant of the petitioner had kept the court summon in another file and the petitioner could not notice the court summon and for that reason the petitioner was not able to attend the court in time are denied as false and untrue. It is also false to state that the advocate of the petitioner, Government Pleader had informed the petitioner that he has been set ex-parte on 16.03.2023 for not appearance with respect to the main suit. The respondents submit that the petitioner falsely stated in his petition that his assistant misplaced the court summon in another bundle. It is a common false averment put forth by all the government officials whenever they have been set ex-parte. Hence, prayed to dismiss the petition.

3. Points for consideration:

Whether this petition will be allowed or not ?

4. Heard both sides. No oral or documentary evidence is let in by both sides.

5. Answer to the point :

Materials on records perused. It is seen from the records the suit in O.S. No.149/2022 has been filed for Declaration. This petition has been filed to set-aside the Ex-parte order passed in O.S.No. 149/2022 on 16.03.2023 against the petitioner/defendant.

7. The main contention of the petitioner for their non appearance in the above case, the assistant of the petitioner was misplaced the summon in another file. Therefore, he has not brought notice of the summon. Hence, he was set exparte on 16.03.2023. Therefore, this Court said the petitioner/defendant in O.S.No.149/2022 as exparte. The respondent in person submitted that the reason stated by the petitioners is not genuine one and they not properly explained. The petitioners only to along the proceedings wantonly and willfully not come forward to appear before this Court. There is no bonofide in the present petition.

8. On considering the both side submission and on perusing the records it is seen that for non appearance of the petitioner/defendant was set exparte on 16.03.2023. Being the public servant, the petitioner herein cannot say the summon was misplaced by the assistant. Hence, he could not made his appearance before this Court. It is duty of the public servant to utmost cautious and taking care with regard to the Court summons. The above suit is pending in the stage of framing of issues only. Therefore, to allowing the petition will not cause any prejudice to the respondents or will deviate the above proceedings. Therefore, though the fact narrated by the petitioner in this petition with the accompanied affidavit is not convincing to this court, in the interest of justice and in order to provide one opportunity to the petitioner to contest the case, this court is inclined to allow this petition.

In the result, this petition is allowed. No costs.

Dictated to Steno - Typist, and typed directly in computer and corrected & pronounced by me in open Court, on this 9th day of July 2024

**DistrictMunsif,
Palladam.**