

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,  
THANJAVUR.**

**Present : Tmt. A. Malarvizhi, M.L.,  
II Additional District & Sessions Judge,  
Thanjavur.**

Tuesday the 30<sup>th</sup> day of March 2021  
(Thiruvalluvar Aandu 2052- Panguni 17<sup>th</sup> day)

**I.A.No.34/2021 in I.A No.91/2019 in OS.103/2015**

1. Saraswathi
2. Nithiya

...Petitioners/Respondents 5 and 7/Defendants 1 & 3

*/vs/*

- 1.K. Ashok kumar                      Respondent/Petitioner/5<sup>th</sup> plaintiff
2. Kalyanasundaram
3. Meena
4. Shanthy
5. Savithiri
6. Manimozhi

...Respondents/ Respondents 1 to 4 /Plaintiffs  
1 to 4/2nd defendant

This petition having come up for final hearing before me on 24.3.2021 in the presence of Thiru.**R. Uthayakumar**, Advocate for the Petitioners/Respondents 5 and 7 /Defendants 1 and 3 and of Thiru. N. **Ranjith**, Advocate for the Respondent/Petitioner/5<sup>th</sup> plaintiff and of Tmt. **S. Poongothai**, Advocate for the Respondents/ Respondents 1 to 4 /Plaintiffs 1 to 5 and upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

**ORDER**

(1) This petition has been filed by the Petitioners u/o 9 R.7 and Section 151 of C.P.C. to pass an order to set aside the exparte order passed in I.A.No.91/2019 on 2.1.2020 against the respondents 5 & 7.

(2) Heard both sides. Records perused. The petitioner/R7 in IA.91/19 filed this petition u/o 9 R 7 to set aside the exparte order against him. He stated that, IA.91/19 was filed by the 5<sup>th</sup> plaintiff to transpose him as defendant, he has to file counter in that petition. But due to sudden sick of jaundice in December 2019 and regained his health only in June 2020 he could not file his counter. So the order of set him exparte in I.A 91/19 is to be set aside. His failure to file counter is neither willful nor wanton. The respondent/petitioner/5<sup>th</sup> plaintiff objected this petition and argued that, this petitioner has deliberately failed to file counter in time. Now he came to drag on the proceedings. This petitioner was represented by his advocate in main suit the reason stated in petition is created for the purpose of this application. He has not filed any medical certificate to prove the alleged illness. So it is to be dismissed.

Considering both sides arguments and records it is found that the petitioner failed to file his counter in IA.91/19 even though sufficient time has been given. Now he filed this petition with reason of suffered from jaundice. It is not proved by any documents. He stated that he took native medicine. It is

a formal reason stated mostly in all petition by the petitioners who failed to file counter or written statement in time. The argument of the respondent that this petitioner was represented in main suit by his counsel is correct. So this court viewed that, this petition was filed to drag on the proceedings. The reason stated by the petitioner is not satisfied to this court. But, it is viewed that, being it is a trial court, both parties should be given every opportunity to contest the case effectively and it is further viewed that allowing this petition will not seriously prejudice the respondent. So this court decides to set aside the exparte order on condition. Hence, it is ordered that, this petition will be allowed on payment of costs of Rs.500/- (Five hundred) to the Respondent/Petitioner on or before 15.04.2021. Call on 16.04.2021.

Pronounced by me in the open court, this the **30<sup>th</sup> day of March 2021.**

**(Sd) A. Malarvizhi**

**II Additional District & Sessions Judge,  
Thanjavur.**

Petitioners and respondents side  
witnesses and Exhibits: Nil

**(Sd) A. Malarvizhi**

**II Additional District & Sessions Judge,  
Thanjavur.**

Order  
*I.A.No. 34/2021 in*  
*I.A No. 91/2019 in*  
*O.S. NO.103/2015*  
*Dated:30.3.2021*