

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

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

Monday the 30th day of October 2023
(Thiruvalluvar Aandu 2054- Ippasi Matham 13th day)

I.A No.172/2023 in O.S. No.298/2022

Stella**Petitioner/1st Defendant**

/Vs/

(1) Baby **Respondent/Plaintiff**

(2) Arif**Respondent/2nd Defendant**

This petition having come up for final hearing before me on **13.10.2023** in the presence of Thiru.**M.S.Anand**, Advocate for the Petitioner and of Thiru. **K.Kumar**, Advocate for the 1st respondent and the 2nd respondent remained exparte 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) The petitioner/1st defendant filed this petition u/o.9.Rule 7 and Section 151 of C.P.C. to set aside the exparte order dated 16.2.2023.

(2) Heard both side arguments and records perused. The petitioner/1st defendant filed this petition u/o.9.Rule 7 and Section 151 of C.P.C. to set aside the exparte order dated 16.2.2023. The petitioner's counsel argued that

the 1st respondent/plaintiff filed the suit for recovery of mortgage amount as if the 2nd respondent who is the power agent of this petitioner has executed a mortgage deed in favour of the 1st respondent for a sum of Rs.25,00,000/-. The husband of the petitioner was suffering from cancer and he died on 17.3.2022. So, she could not move anywhere for about one month. After that she was suffering from jaundice from 5.2.2023 to 7.6.2023 for more than three months. She had taken bed rest and at that time she took country medicine . Therefore, she could not appear before this court on 23.1.2023. This court passed an order to set exparte against this petitioner. The petitioner has good defence in this case. Her absence before this court is neither willful nor wanton. Unless the exparte order is to be set aside, she will be seriously prejudiced. So, the exparte order against this petitioner dated 16.2.2023 is to be set aside and this petition may be allowed.

(3) The 1st respondent's counsel argued that the reason stated by the petitioner should be proved by her by important documentary evidence. The petitioner has no merit in this petition. The averments in the petition are utter false and imaginary. This petition is frivolous one. So, this petition may be dismissed.

(4) Both side arguments considered. Records perused. The petitioner failed to appear before this court on 16.2.2023 even though summon was

served on 12.1.2023. The petitioner was set exparte on 16.2.2023 for her absence. But, the petitioner was suffering from jaundice from the date of 5.2.2023. She has not assigned any reason for her absence on 23.1.2023. The reason of suffering from jaundice is a formal reason which was stated by many litigants to file like this petition. Therefore, the reason is not acceptable one. But, in the interest of justice, this court views that one opportunity may be given to this petitioner to contest the case for the effective disposal. Hence, it is ordered that this petition will be allowed on payment of costs of Rs.1000/- on or before 7.11.2023 . Call on 8.11.2023.

Dictated to the Steno-Typist, transcribed by her in computer, corrected and pronounced by me in open court, this the **30th day of October 2023.**

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

Petitioner and Respondents side
Exhibits and witnesses: Nil

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

ORDER

I.A.No.172/2023 IN

O.S.NO.298/2022

DATED: 30.10.2023.