

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THANJAVUR.

PRESENT : **Tmt. Jacintha Martin, B.L.,**
Principal District Judge, Thanjavur.

Wednesday, the 9th day of August, 2023.
(Thiruvalluvarandu 2054 Sri Sobakirudhu Varudam Aadi Thingal 24th day)

I.A.No.162/2023 in O.S.No.132/2021

1) Karnataka Bank Ltd, Thanjavur
Branch, Thanjavur rep. by its
Branch Manager.

2) Managing Director & C.E.O,
Karnataka Bank Ltd, Mangalore.

... Petitioners / Defendants 5 & 6

versus

1) SP. Subramanian

... 1st Respondent / Plaintiff

2) S.Panneerselvam (died)

3) P.Gurunathan

4) P.Karthikeyan

5) R.Ragu

6) N.Rajendran

...

Respondents 2 to 7 /
Defendants 1 to 4, 7 & 8

7) S.Vankithamani

This Interlocutory Application has come up for final hearing before me on 03.08.2023 and upon hearing the arguments of Mrs.S.Thenmozhi, Learned Advocate appearing for the Petitioners; Mr.K.Vaithilingam & Mrs.V.Vidya, Learned Advocates appearing for the 1st Respondent and of Mr.S.Jayachandran, Learned Advocate appearing for the 5th Respondent and the respondents 3, 4, 6 & 7 remained exparte

and the 2nd Respondent having been reported as dead and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

1) The petitioners / defendants 5 & 6 filed this petition under Order 9 Rule 7 of CPC praying to set aside the exparte order passed against them on 05.07.2023.

2) The petitioners have stated that the 1st petitioner / 5th defendant in the main suit was working as a Manager of Karnataka Bank Ltd, Thanjavur Branch and he was authorized to sign on behalf of the 2nd petitioner / 6th defendant. It is said that the court notice and other connected papers were duly served on the 2nd petitioner / 6th defendant and the 2nd petitioner / Karnataka Bank have entrusted the same with their office assistant to send it to their Advocate. Unfortunately, the papers got mixed up with other connected papers and it could not be traced easily. So, the 2nd petitioner / 6th defendant was set exparte on 18.11.2021 itself. Further the said case posted on 11.03.2022 for written statement of 1st petitioner / 5th defendant and on that date, the 1st petitioner / 5th defendant unable to file the written statement due to his unavoidable official work and so, he was set exparte on 11.03.2022. The non filing of written statement by the 1st petitioner / 5th defendant is neither willful nor wanton and there is no negligence on the part of the 2nd petitioner / 6th defendant in not filing the vakalath in time and hence, pleaded to allow this petition.

3) **On the other hand**, the 1st respondent / plaintiff filed his counter and

objected the petition stating that the reasons stated by the petitioners are not proper and valid. The exparte order passed against the 1st petitioner / 5th defendant was not set exparte in a single hearing, rather about 25 hearings were given for filing the written statement. But, the 1st petitioner / 5th defendant failed to file the written statement and likewise, the petition filed by the 1st petitioner / 5th defendant representing for 2nd petitioner / 6th defendant also not maintainable. Similarly after entering the suit by undertaking to file vakalath, more than 31 hearing dates were given. But, the opportunities were not utilized by the 1st petitioner on behalf of 2nd petitioner. The petitioners / defendants 5 & 6 who are banking institutions fully aware about the fake of the case without filing vakalath and written statement. Hence, prayed to dismiss the petition.

4) **Point that arises for consideration in this Petition is that**

Whether this petition is to be allowed as prayed for?

5) **Point:** Heard. Records perused.

6) On perusal of the notes paper, it reveals that the petitioners / Defendants 5 & 6 were already set exparte on 11.03.2022 and 18.11.2021 for non-filing of written statement and vakalath respectively pending on the file of II Additional District Court, Thanjavur. In that circumstance, as per order passed by this court in Tr.O.P.No.42/2023 dated 05.04.2023, the case bundle was transferred to this court on 01.06.2023 and no petition has been filed for setting aside the above said exparte order and in that circumstance, after receipt of case bundle, this court issued

summons to both sides afresh and the suit stands posted to 05.07.2023 and on that day, the petitioners / defendants 5 & 6 remained absent and thereby, they were set exparte and against which, the petitioners have come forward with this petition praying to set aside the exparte order passed against them on 05.07.2023.

7) Further on perusal of averments in the affidavit and counter, it reveals that there were about 25 hearings given for filing the written statement by the 1st petitioner / 5th defendant and there were about 31 hearings given for filing vakalath by the 2nd petitioner / 6th defendant. The objection stated by the 1st respondent that sufficient opportunities were given to the petitioners is absolutely true. The petitioners 1 & 2 who are the banking institutions have not utilized the opportunities to proceed with the case. The petitioners 1 & 2 / defendants 5 & 6 were not responsible though they are in banking institutions dealing with the public money were not proper in filing the written statement and vakalath. Hence, the order passed against the petitioners is valid under law.

8) The 1st respondent / plaintiff has stated that the presence of the 1st petitioner / 5th defendant in the case is not necessary because, no claim against the 1st petitioner / 5th defendant. But, it is a money claim against the petitioners / defendants 5 & 6 and respondents 2 to 7 / defendants 1 to 4, 7 & 8 and so, when the petitioners 1 & 2 / defendants 5 & 6 were arrayed as parties in the suit, their presence is necessary in the suit. But, the opportunities given by the court was not utilized by the petitioners. Hence, considering the facts and circumstances of this case, this court

proceeds to allow this petition on condition and thus, the point is answered accordingly.

In the result, this petition will be allowed on payment of cost of Rs.5,000/- by the petitioners to Mediation and Conciliation Centre, Thanjavur on or before 16.08.2023, failing which, this petition stands dismissed. Call on 17.08.2023.

This Order is dictated by me to the Stenographer Grade-II of this Court, transcribed by her in Computer, corrected and pronounced by me in open court, this the 09th day of August, 2023.

Principal District Judge,
Thanjavur.

Draft / Fair Order in
IA.162/2023 in O.S.No.132/2021
PDJ Court, Thanjavur.
D.O.O : 09.08.2023.