

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
TIRUVANNAMALAI**

**PRESENT : Tr. B.C. GOPINATH, M.L.,
Additional District Judge,
Tiruvannamalai,**

Thursday, the 10th day of July, 2025

I.A.No. 1/2025 in O.S.No . 102/2024

Mahendira Kumar Petitioner / 2nd defendant
/vs/
Elumalai ... Respondent / Petitioner

This petition coming before me for final hearing on 10.07.2025 in the presence of Tr. N. Ezhilmaran Advocate for the petitioners and Tr. G. Pugazhenthii, Advocate for the respondent, and after hearing the arguments of both, upon perusing the records and having stood over for consideration, till this day, this court passed the following

ORDER

Petition under Order IX Rule 7 CPC, to set aside the exparte order passed against the petitioner / 2nd defendant in the above suit on 24.01.2025.

1) PETITIONER'S CASE IN BRIEF:

The petitioner is the 2nd defendant in the suit in O.S.No. 102/2024. The respondent /plaintiff has filed the suit for Specific Performance

and for other reliefs. The case was posted on 24.01.2025 for filing written statement. But as the petitioner suffered from acute fever, he could not contact his counsel to give instructions. Therefore he was set exparte. His non-appearance is neither willful nor wanton. Hence the exparte order dated 24.01.2025 passed against him. Hence the petition.

2) AVERMENTS IN THE COUNTER :-

The petition is not maintainable. The averment that the matter was posted to 24.01.2025 for filing written statement and hence he did not appear before this court is false. The further averment of the petitioner that he suffered from acute fever and had gone to the hospital, and hence he was not able to meet his counsel to file a written statement is absolutely false. The averments that the petitioner was affected by acute fever has to be proved by the petitioner and he has not filed any document in support of the same. Hence the petition is liable to be dismissed. Hence the petition is liable to be dismissed.

3) During enquiry, no evidence, oral or documentary was let in. This Court has perused the materials on record and has considered rival submissions.

4) Now the point for consideration is whether the exparte order passed against the Petitioner / 2nd Defendant in the above suit can be set aside or not ?

5) POINT:

From the records, it is seen that the the respondent/ plaintiff Elumalai has filed the above suit O.S.No.102/2024 against the petitioner Mahendra kumar and others for Specific Performance and other reliefs. Records shows that the suit was posted on 24.01.2025 for filing a written statement of petitioner / 2nd defendant / Mahendra kumar. But 2nd defendant failed to file a written statement and so he was set exparte on 24.01.2025 and the matter was adjourned to 20.02.2025 for exparte evidence. At that stage the petitioner / 2nd defendant has filed this petition to set aside the exparte order along with the written statement.

6) The petitioner states that he suffered from Acute fever and was unable to contact his counsel and therefore he was set exparte on 24.01.2025. The respondent / Plaintiff alleges that the petitioner is playing dilatory tactic. Though the reason does not appear convincing, this being a suit for Specific Performance and other reliefs, this court is of the considered view that the petitioner can be put to terms while giving an opportunity to contest on merits. The point is answered accordingly.

In the result, the petition is allowed, on condition that the petitioner pays Rs.1000/- as costs to the respondent on or before 30.07.2025 failing which the petition shall stand dismissed. Call on 31.07.2025.

Dictated to the Steno-Typist of this Court, transcribed by her in computer, corrected and pronounced by me in open court, this the 10th day of July , 2025.

**Additional District Judge,
Tiruvannamalai.**

