

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
TIRUVANNAMALAI.

PRESENT : **Thiru P. Mathusuthanan, B.A., B.L.,**

Principal District Judge,

Tiruvannamalai

Wednesday, the 27th day of November - 2024

I.A.No.1/2024 in O.S.No.149/2021

Shankar		... Petitioner / 1st Defendant
	versus	
Chandra		... Respondent / Plaintiff

This Interlocutory Application has come up before me for final hearing today (27.11.2024) and upon hearing the arguments of **Tr.S.L.Babu**, Learned Advocate appearing for the Petitioner and **Tr.P.M.Ranganathan**, Learned Advocate appearing for the Respondent and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

The petitioner / 1st Defendant filed this petition under Order 9 Rule 7 of CPC to set aside the exparte order passed against him on 04.11.2022 in O.S.No.149/2021.

2) Brief averments of the petition:

The petitioner is the 1st defendant in the above suit. Since the non filing of the written statement on the side of the petitioner in the above suit on 04.11.2022, the exparte order was passed against the petitioner. On that date the petitioner was affected severe stomach pain, jaundice and also affected eye sight, hence he had been taking treatment at Jipmer Hospital, Pudhucherry and to that effect he filed the case sheet along with this petition. Since the above said reason, he unable to contact his counsel to request him to file written statement for the above said suit. It is neither willful nor wanton one. If the exparte order is not set aside, he will be put to irreparable loss and hardship. Hence this petition.

3) Brief averments of Counter of 1st respondent:-

This petition is frivolous and against the true. This respondent does not admits any of the allegations contained in the petition save those that are specifically admitted herein and puts the petitioner to strict proof of each and every one of them. The petitioner and the respondent are sister and brother. The respondent has filed a suit for partition as against the petitioner. In order to drag on the proceedings, the petitioner has come forward with this petition after lapse of 2 years from the exparte order, hence the petition is liable to be dismissed.

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

Whether this petition is to be allowed as sought for?

5) Point: The learned counsel appearing for the petitioner would contend that on account of the ill-health, he was not able to appear before the Court on 04.11.2022 to file his written statement and he would further contend that he has valid defence to contest this case, hence he argued for allowing this application.

6) Per contra, the learned counsel appearing for the respondent/plaintiff would contend that in order to drag on the proceedings, the petitioner has come forward with this petition after lapse of 2 years from the exparte order, hence he argued for dismissal of the petition.

7) Heard both sides and perused the records.

8) Admittedly, while the main case was posted for filing of the written statement of the petitioner herein, he did not turn up, hence this court passed an order of exparte as against him. In such a circumstance, almost after completion of 2 years the petitioner has come forward with this petition. And it is further noted that he has been filed the petition alongwith written statement on his side and considering the submission of the petitioner that he has valid defence to contest the case as well as the facts and circumstance of this case, though the petitioner herein has not satisfactorily convinced the court to allow

this petition, in order to ensure the fair opportunity be given to the petitioner to contest his case on merit, this court is inclined to allow this petition.

9) It is well settled law that no one shall be prevented from placing his defence at threshold on account of delay on his part in placing his defence. Hence, for the above reasoning and discussion, this Court is inclined to allow this application. However, considering the period of delay of 2 years in filling the petition to set aside the ex parte decree passed in this suit, it is deemed appropriate to allow this application on payment of reasonable cost payable by the petitioner to the respondent herein. Hence, this court inclined to allow this petition on condition. Thus, the point is answered accordingly.

In fine, this petition will be allowed on payment of cost of **Rs.2000/-** to the respondent directly by the petitioner on or before 19.12.2024, failing which this petition stands dismissed. Call on 20.12.2024.

This Order is dictated by me to the *Stenographer Grade-I* of this Court, transcribed by her in Computer, corrected and pronounced by me in open court, this the 27th day of November - 2024.

**Principal District Judge,
Tiruvannamalai.**