

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHEYYAR

THIRUVANNAMALAI DISTRICT

Present :- **Tmt. K. Naleeni, M.L.,**
Principal District Munsif, Cheyyar,
Thiruvannamalai.

Friday, the 12th day of September, 2025

I.A.No.04/2024 in O.S.No.63/2023

1. Chinnakuzhandai

2. Janakiraman

... Petitioners/Defendants 1 and 3

V.

1. Munusamy

... 1st Respondent/Plaintiff

2. The Tahsildar, Vembakkam Taluk.

3. The Sub Collector, Cheyyar,

4. The District Collector, Thiruvannamalai District.

...Respondents 2 to 4/Defendants 2, 4 and 5

This petition is coming before me on 02.09.2025 for final hearing in the presence of Thiru.E.Sethu, Learned Advocate for the Petitioners and Thiru. G.Gunasekaran, Learned Advocate for the 1st Respondent, 2 to 4 Respondents have been set exparte in main suit and upon hearing both sides and after careful perusal of the entire case records and having stood over for consideration till this day, this Court delivered the following:

ORDER

This Petition has been filed under Order IX Rule 7 of Code of Civil Procedure, 1908 to ***set aside the exparte order*** passed on 20.11.2023 in OS. No. 63/2023 on the file of this Court.

2. BRIEF AVERMENTS OF THE PETITION AS FOLLOWS:

The Petition is filed by the 2nd Petitioner and is the 3rd Defendant in O.S. No. 63 of 2023. The Suit was filed by the 1st Respondent/plaintiff for Declaration against the defendants. The petitioner states that the above suit was posted on 20.11.2023 for appearance/ filing of Written Statement. On that day, as the petitioner was suffering from joint pain and Jaundice, he could not contact counsel and file his written statement. Therefore, this court had set exparte on 20.11.2023 for non-filing of Written statement. The petitioner states that non-filing of the Written Statement was neither willful not wanton and that he has filed the written statement along with this petition. The petitioner further states that he has got valid defense in the above suit and if the exparte order is not set asided, he will be put in much and irreparable loss. Hence, this petition is filed by the Petitioner under Order IX Rule 7 of the Code of Civil Procedure, 1908 to set aside the ex-parte order passed on 20.11.2023.

3. BRIEF AVERMENTS OF THE COUNTER AS FOLLOWS:

The Respondent submits that, the averments stated in the petition as false, frivolous and vexatious. The petitioner is put to strict proof of the averments stated in the petition. The Respondent contends that the petitioner

has no intention to conduct the case and that his only intention is to drag on the proceedings. The reasons told by the petitioner in the petition for non-appearance on the date of hearing is false and concocted one. The Respondent further submits that each day delay has not been explained. Hence, he prayed to dismiss the petition with costs.

4. POINT FOR CONSIDERATION:

The sole point to be considered by this Court is whether the present petition can be allowed or not?

5. ORAL AND DOCUMENTARY EVIDENCE:

No oral or documentary evidence was adduced on both the sides.

6. DETERMINATION:

Heard both sides and Records perused.

On perusal of the records, it is seen that the 2nd Petitioner, who is the 3rd Defendant in O.S. No. 63 of 2023, states that the suit was listed on 20.11.2023 for appearance and filing of the Written Statement. On that date, he was suffering from joint pain and jaundice and was unable to engage counsel or file the statement, leading to an ex parte order. He submits that the default was neither willful nor deliberate and that he has filed the Written Statement along with the present petition. The petitioner further contends that he has a valid defense and that, if the ex parte order is not set aside, he will suffer undue hardship and irreparable loss. Hence, the petition is filed under Order IX Rule 7 of the Code of Civil Procedure, 1908 to ***set aside the exparte order*** passed on 20.11.2023 in OS. No. 63/2023 on the file of this Court.

As per Order IX Rule 7 of the Code of Civil Procedure, 1908, the Court has the power to set aside the exparte order provided **good cause** has been

shown by the Defendant for his previous non-appearance. Further, it is to be noted that there is no prescribed limitation period for filing an application under Order IX Rule 7. This means that the Defendant can apply to set aside the ex parte order at any time, provided he can demonstrate good cause for his non-appearance.

It's well settled law that Applications under Order IX Rule 7 has to be **construed liberally** so as to advance substantial justice. It is seen from the records that the Plaintiff/ 1st Respondent has filed this suit for Declaration against the Petitioners and 2 to 4 Respondents. However, due to non-appearance and non-filing of Written Statement, the suit was set exparte against the Petitioners on 20.11.2023.

The reason stated by the Petitioners/Defendants 1 and 3 for non-appearance was on account his illness. However, medical records has neither been produced nor he has examined himself to support his contention. The Respondent objects to the petition on the grounds that the non-appearance of the Petitioner is willful and deliberate and is only to drag on the proceedings.

Upon considering the contentions of both sides, this court is of the view that, being a court of first instance preventing the petitioners from contesting the claim of the respondent on merit will cause irreparable loss to the petitioners. Eventhough, the petitioner has not shown good cause for his non-appearance, however, in the interest of justice and to avoid multiplicity of proceedings, this Court finds that an opportunity ought to be given to the petitioner to appear and contest the original suit by allowing this petition. However, for the hardship caused to the Respondents and for delaying the suit proceedings, this Court is inclined to allow this petition only on condition to pay a sum of Rs. 200/- as costs to the 1st Respondent/plaintiff on or before

18.09.2025.

Accordingly, the exparte order passed is set aside and the petition is hereby allowed with costs.

7. RESULT:

In the result, ***this petition is hereby allowed on condition with costs of Rs. 200/- to be paid to the Respondent / Plaintiff on or before 18-09-2025 failing which the petition will be dismissed.***

Dictated by me to the Steno typist, directly typed by her, corrected and pronounced by me in open court, on this the 12th day of September, 2025.

Principal District Munsif,
Cheyyar.

8. List of Witnesses:

On the side of the Petitioners : NIL
On the side of the Respondents : NIL

9. List of Documents :

On the side of the Petitioners : NIL
On the side of the Respondents : NIL

Principal District Munsif,
Cheyyar.