



IN THE COURT OF SUBORDINATE JUDGE : LALGUDI

Present : Thiru.S.Vijayakumar M.A., M.L.,

Subordinate Court, Lalgudi

Dated Monday, the 26th day February 2024

I.A No.1/ 2023 in OS.No.26/2022

(CNR.No.TNTP180000742022)

1. Vijaya
2. Sudha
3. Priyanka
4. Anitha

...Petitioners/defendants.

- Vs -

Kalaiyarasi

. . . Respondent/plaintiff.

This petition is filed on 27.03.2023 and taken on file on 30.03.2023 and came up before this court for final hearing on 19.12.2023, in the presence of Thiru.M.Vijayakumar- advocate for the petitioners and of Thiru.V.Ramanujam advocate for the respondent and upon hearing both side and upon perusing the case records and having stood over for consideration before this court till this day, today this court hereby delivers the following. . .

### **ORDER**

This is the petition filed by the petitioners/defendants under order 9 rule 7 and section 151 of CPC praying to set aside the exparte the order passed as against the petitioners by this court on 14.02.2023.

## 2. Short and Summary of affidavit and petition :-

The 1<sup>st</sup> petitioner is the 1<sup>st</sup> defendant in the above said main suit and she is well acquainted with the facts and circumstances of the case herein and she swears this affidavit on behalf of the other petitioners too and the above said suit was posted on 14.02.2023 for filing their side written statement and due to severe viral fever she was unable to meet her counsel for preparing written statement and in pursuant to that, they called absent and set exparte on same day and there after they have advised to file the present petition to set aside the exparte order passed as against them or else they will be put to irreparable loss and hardship and it is just and necessary that this court may be pleased to set aside the exparte order passed as against them by this court on 14.02.2023.

## 3) Gist of Counter :-

All the averments made in the affidavit which is support of set aside exparte affidavit's application except those that are specifically admitted herein are all denied as false and the petitioners/defendants are put to strict proof of the same and the petition is not maintainable both in law and on facts and the petitioners are not entitled to the relief as prayed for and the allegations mentioned in the affidavit in paragraph Nos.2 and 3 are stoutly and emphatically denied as false by this respondent and the petitioner/defendant did not file any single document with respect to alleged ailments, what kind of illness not sated in the affidavit and the allegations mentioned in the affidavit that the case was posted on 14.02.2023 for filing the written statement to the petitioner/defendant side, due to severe viral fever she was unable to meet her counsel for preparing written statement and in pursuant to that all are stoutly emphatically denied as false by this respondent, the respondent craves leave to file additional counter when it is felt necessary in future and there is no merit in this applicaton and the petitioners' affidavit is wrong and technically defective, and the frame of petition is also defective and it is therefore prayed that this court may be pleased to dismiss the application with the costs.

4) There is no oral and documentary evidence let in by both side. Both side argument heard. Available case records are perused.

5) Point for determination

Whether the petition to set aside the exparte order is allowed or not? is the point for determination of this petition.

6) **On the point:-**

The learned counsel for the petitioners/defendants would submit that due to viral fever of the 1<sup>st</sup> petitioner, the petitioners were unable to meet their advocate and file the written statement and at present they filed the written statement and so this petition may be allowed.

7) Per contra the learned counsel for the respondent/plaintiff would submit that the reason of petition is not acceptable and so this petition may be dismissed.

8) This court is carefully considered the submission of both side and available case records. There is no dispute that on 14.02.2023 when the main suit for recovery of money on mortgage is posted for filing written statement, the petitioners failed to file the written statement and they were set exparte.

9) This petition is filed along with the written statement on 27.03.2023. Hence this petition is filed within short span of time from the date of exparte order. This is the first petition to set aside the exparte order on the side of petitioners. The alleged reason of severe viral fever of the 1<sup>st</sup> petitioner is acceptable to decide the main suit on merits.

10) The alleged objection of want of medical records for ailments is too technical and the same is not acceptable to meet the ends of justice in the main suit. Further in view of

principle of natural justice one more opportunity ought to be granted to the petitioners to participate and contest the main suit.

11) The petitioners entered appearance in the main suit on 05.04.2022. They were set exparte on 14.02.2023. This petition is filed on 27.03.2023. If this petition is allowed with cost the respondent will not be put in to great prejudice but if this petition is dismissed the petitioners will be prejudice and put in to great hardship.

12) For the above reasons, the argument of the petitioners side is accepted and the argument of the respondent side is rejected and this court is find that this petition to set aside the exparte order is liable to be allowed with cost against the petitioners.

In the result, petition is allowed with cost against the petitioners. The petitioners are directed to pay the cost of Rs.2000/- to the respondent on or before 01.04.2024. Failing which petition will be dismissed automatically. Call on 01.04.2024.

Dictated to steno-typist, typed by her in computer, printout taken, corrected and pronounced by me in open court on this the 26th day of February 2024.

SUB JUDGE  
LALGUDI.

Enclosure:

Petitioners side witness and document :- Nil.

Respondent side witness and document :- Nil.

SUB JUDGE  
LALGUDI.