

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: TMT. V. VANNAMALAR, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.

Thursday, the 20th day of June 2024.

I. A. NO.3 OF 2023

IN

O.S. NO.102 OF 2018

B.Dhakshinamoorthy Petitioner/Defendant

Versus

K.Ranganathan Respondent/Plaintiff

This petition having come on 20.06.2024 before me for final hearing in the presence of Mr.J.Selvaraja, Mrs.C.Latha Rani and Mr.S.Prashanth, learned counsels for the petitioner and Mr.R.Gopalakrishnan, Mr.A.Moorthy, learned counsels for the Respondent. Upon hearing the arguments made by the learned counsels for the petitioner and the respondent and on perusal of the material case records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition has been filed under Order 9 Rule 7 read with Section 151 of CPC to set aside the exparte order dated 30.01.2023 passed in OS.No.102 of 2018 against the petitioner.

2. Brief averments of the affidavit filed by the petitioner are as follows:

2.1. The petitioner who is the defendant in the suit submits that the above suit has been filed by the Respondent/Plaintiff seeking for a relief of permanent injunction as against the petitioner. The petitioner further states that on 30.01.2023 the suit was posted for cross examination of PW1. The petitioner, as he was aged, was not able to attend the court on that day and hence he was set exparte. The petitioner also submits

that due to his illness, he was not able to instruct his counsel to appear on the date of hearing. The petitioner further states that only recently he came to know about the exparte order passed against him in the suit.

2.2. The petitioner further submits that he has a good case on merits and that if the exparte order is not set aside, he would be put to great prejudice, hardship and loss of reputation since the Respondent/Plaintiff had filed a false case against him. On the other hand, if the exparte order is set aside, no harm, hardship or difficulty would be caused to the respondent/plaintiff. Hence this petition.

3. Brief averments of the counter filed by the respondent are as follows:

The respondent/plaintiff submits that he has filed the above suit against the petitioner/defendant for a relief of permanent injunction. The respondent denies the averments made in the affidavit of the petitioner and submits that for nearly 1 ½ years there was no representation on the side of the petitioner/defendant and that now the petitioner has come up with this petition only to prolong and protract the suit proceedings. The petitioner has filed this petition only with an intention to harass the respondent. Hence, the petition is liable to be dismissed with costs.

4. On the side of the petitioner and the respondent no oral or documentary evidence was placed before this court. Now, it is the paramount duty of this court to decide whether this petition is to be allowed or not.

5. Heard both sides arguments. Records Perused.

6. On careful analysis, it is noted that the petitioner is the defendant in the suit and the suit has been filed by the respondent / plaintiff for a relief of permanent injunction as against the petitioner. This petition is filed by the petitioner / defendant to set aside the exparte order passed on 30.01.2023 against him in the suit. The petitioner in his affidavit has stated that due to his age he was unable to either attend the court in person on the date of hearing of the case or to instruct his counsel to attend the suit.

Hence on the said date he was called absent and set exparte for his non appearance. On the other hand, the respondent objects to allow this petition stating that the petitioner has filed this petition only to drag on the suit proceedings.

7. It is a settled principle of law that has been laid down by the Honourable Supreme Court of India and Honourable High Court of Judicature of Madras that these kind of applications are to be liberally viewed. Further, in the interest of justice and in following the principles laid down by the Honourable Supreme court and Hon'ble High Court of Madras, this court finds it right to grant an opportunity to the petitioner to place his defence in the original suit and accordingly, this court is inclined to allow this petition. To compensate the delay and expenses caused to the respondent as a result of this petition, this court is inclined to allow this petition on terms.

8. In the result, this petition is allowed subject to payment of costs of Rs.2000/- payable by the petitioner to the respondent on or before 05.07.2024. call on 12.07.2024 for reporting compliance.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 20th day of June 2024.

**DISTRICT MUNSIF,
PONNERI.**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF,
PONNERI.**

Fair/ Draft Order
I.A.No.3/2023
O.S.No.102/2018
Date:20.06.2024
DMC,PNI.