

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

**Present : Tmt. R.D. Gurulakshmi, M.A., M.L., P.G.D.I & C.L.,
District Munsif, Tiruttani.**

Dated the Friday of 29th Day of November 2024

I.A.No.1/2024 in OS.No.18/2024

(CNR.No.TNTR21-000018-2024)

...

V. Manoharan

... Petitioner/Defendant

/Versus/

R. Vijayan

... Respondent/Plaintiff

This petition came up before me for the final hearing on 19.11.2024 in the presence of M/s.B. Akilakumari, B. Mumthaj, Advocates for Petitioners/Defendant and M/s. P.S. Parthasarathy, K.V. Ravi, Advocates for Respondent/Plaintiff. Upon hearing both sides and having stood over for consideration till this day, this court delivered the following:

ORDER

The petition is filed by the petitioner under order 9 Rule 7 of CPC to set aside the exparte order dated 09.08.2024.

1. Petition averments in brief:-

The suit was posted to 09.08.2024 for written statement. The petitioner was ill health and unable to appear on that day and unable to approach his advocate also. Since there was no representation on that day. Therefore the defendant called absent set exparty on 09.08.2024. The petitioner absence is neither willful nor wanton but due to the above said reasons. If the suit is not restore the petitioner may be put to irreparable loss and hardship. The petitioner having fair chance of success in the suit. Hence this petition.

2. Counter filed on behalf of the respondent in brief:-

This petition is not maintainable either in law or on facts. The reasons stated to set aside the exparty order is not convincing and acceptable by court. There is no merits in this petition. Hence the petition has to be dismissed.

3. Point for determination:-

Whether the petitioners are entitled to set aside the exparte order dated 09.08.2024? or not?

4. Heard both side. According to the petitioner, when the suit was posted for written statement on 09.08.2024, the petitioner was ill health and unable to appear his advocate. Therefore the defendant called absent set exparty on 09.08.2024. The petitioner having fair chance of success in the suit. Hence he prays to allow this petition. Respondent resisted the petition by contending that there is no merits in this petition. Hence the petition has to be dismissed.

5. On perusal of records, defendant appeared on 14.06.2024 and posted for written statement on 09.07.2024. On 09.07.2024, 01.08.2024, 09.08.2024 written statement not filed on the side of defendant. Hence defendant called absent and set exparty on 09.07.2024. In spite of sufficient opportunity given to petitioner/defendant, petitioner not turned up for filling written statement. No sufficient reason shown in the petition. Even though considering the fact and circumstances of this case, this court is of view that in the interest of justice to provide the petitioner an opportunity to prove his case, this petition has to be allowed on condition.

In the result, this petition is allowed on condition that the petitioner has to pay a cost of Rs.500/- to the respondent on or before 11.12.2024 failing which this petition stands dismissed. Call on 11.12.2024.

Dictated to my Steno – Typist, typed by her directly in computer, corrected and pronounced by me in open court, this the 29th day of November 2024.

Sd/- R.D. Gurulakshmi
29.11.2024
District Munsif,
Tiruttani.

Petitioner and Respondent side Exhibits and Witnesses :- Nil

Sd/- R.D. Gurulakshmi
29.11.2024
District Munsif,
Tiruttani.