

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

Present : **Tmt. S. KAVIPRIYA**, B.A., LLB.,
District Munsif, Tiruttani

Dated this Thursday the 9th Day of September 2021

IA.No.2 OF 2021 IN OS.No.14 OF 2020

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1. Kannammal (died)
2. Rajendran
3. Sriramulu
4. Thulasi
5. Pandu
6. Dilli
7. Jagadesan

..Petitioners/Defendants

/Vs/

Sagunthala

...Respondent / Plaintiff

This petition came up before me for final hearing on 19.08.2021 in the presence of Mr. Mathiniraj Selvan, Advocate for petitioners, and 1st petitioner died, and Mr. C.A. Natarajan, Advocate for Respondent and upon hearing both sides, after perusing records and having stood over for consideration till this day, this court delivered the following:-

ORDER

This petition is filed under order 9 rule 7 of CPC to set aside the exparte order dated 29.01.2021.

Petition in brief are as follows:-

2. The Respondent / Plaintiff have filed the above suit against the petitioner/ plaintiff for Permanent injunction. In the above case posted on

29.01.2021 for filing of written statement. For that the petitioners advocate has prepared the written statement but due to misplaced important document hence, the petitioner was unable to complete the statement and appear before this court to file written statement. On that while the petitioner have been called absent, hence an exparte order was passed against the petitioner on 29.01.2021. The failure to file the written statement is neither willful nor wanton one. Hence, the Hon'ble Court may be pleased to set aside the exparte order.

Counter filed by respondent in brief are as follows:-

3. The petition is not maintainable either-in-law or on facts. The petitioners did not file statement within time and time is lapsed more than 90 days as per CPC and the failure to file statement is wanton and so this petition is liable to be dismissed as they did not file statement within time. There are no bonafide merits in this petition.

Point for determination:-

4. Whether the petitioners are entitled to the relief as sought for?

5. The petition filed by the petitioner is to set aside the exparte order against the petitioner on 29.01.2021 and permit to file her written statement. The petitioner stated that the above case was posted on 29.01.2021 for filing of written statement and the petitioners advocate has prepared the written statement but due to misplaced important document hence, the petitioner was unable to complete the statement and appear before this court to file written statement and while the petitioner have been called absent, hence an exparte order was passed against the petitioner on 29.01.2021. The failure to file the written statement is neither willful nor wanton one. The respondent also stated that the petitioners did not file statement within time and time is lapsed more than 90 days as per CPC and the failure to file statement is wanton and there are no bonafide merits in this petition.

6. Now it has to be decided whether the petitioners are entitled for setting aside the petition. The petitioner was not filed written statement and hence the petitioner have called absent, and hence an exparty order was passed against the petitioner on 29.01.2021. Thereafter, the petitioner filed this petition on 09.03.2021 for which there is a delay of 38 days. As per Order 9 Rule 7 petition to be filed on or before next hearing. There is 3 years limitation for Order 9 Rule 7 CPC under article 137 of limitation act. This petition is filed in time. Hence, this court if of view that in the interest of justice to provide the petitioners an opportunity to prove their case, to prevent multiplicity of proceedings and for proper adjudication of the case, this petition has to be allowed with costs.

In the result, this petition is allowed on costs, of Rs.250/- to the respondent. Costs to be paid on or before 15.09.2021 failing which this petition stands dismissed. Call on 15.09.2021.

Dictated to Steno – Typist, computerized by her directly, corrected and pronounced by me in open court, this the 9th day of September 2021.

Sd/- S. Kavipriya
District Munsif,
Tiruttani.

Both side witness and Exhibits:- NIL

Sd/- S. Kavipriya
District Munsif,
Tiruttani.