

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 Thursday of 23rd Day of January 2025

I.A.No.1/2024 in OS.No.65/2021

(CNR.No.TNTR21-000075-2021)

...

M.S. Velu

...Petitioner / 1st Defendant

/Versus/

1. M.S. Gurunathan

... 1st Respondent/ Plaintiff

2. The Manager City Union Bank,
Tiruttani Branch.

... 2nd Respondent/ 2nd Defendant

This petition came up before me for the final hearing on 04.01.2025 in the presence of M/s. K. Anbalagan, M. Anbarasu, Advocates for Petitioner/1st Defendant, M/s. R. Srinivasan, R. Rajeshwara Babu, P. Praveena, S.V. Sandhya, Advocates for 1st Respondent/Plaintiff, M/s. E.S.Murali, Advocates for 2nd respondent, counter of 2nd respondent not filed, hence 2nd respondent was called absent, and set exparty. 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 13 of CPC to set aside the exparty order passed on 06.01.2023.

1. **Petition averments in brief:-**

The Plaintiff filed the suit for declaration and Injunction. The suit was posted to 06.01.2023 for counter and written statement. But on that day the petitioner was seriously ill, undergone eye operation and taking rest. Hence the petitioner could not able to file counter and written statement in time. Hence the dismissed for default order was passed by the court against the petitioner. Hence this petition.

2. **Counter filed on behalf of the 1st respondent in brief:-**

This petition is not maintainable either in law or on facts. The allegation contained in affidavit filed in support of the Order 9 Rule 13 is ambiguous. Even as per the counter no prima facie case in favour of the petitioner/ defendant for setting aside the injunction order and the suit is not maintainable. The reason for non filing of written statement is not maintainable. The petitioner had not filed any proof of document of eye operation. The defendants are making a false claim over the property of the plaintiff. The petition lacks bonafide merits. The set aside petition was filed after one year of exparte. The delay is not properly explained. Hence this petition is to be dismissed in limini with costs.

3. **Point for determination:-**

Whether the petitioner is entitled to the relief as prayed for? or not?

4. Heard both side. According to the petitioner, due to petitioner undergone eye operation, the petitioner could not able to file counter and written statement in time. Hence exparty order was passed by the court against the petitioner. Therefore petitioner prays to allow the petition. The 1st Respondent resisted the petition by contending that the petition lacks bonafide merits. The set aside petition was filed after one year of exparte. The delay is not properly explained. Hence, prays to dismiss the petition with costs.

5. On perusal of records, in this case petitioner appeared on 11.11.2021 and posted for written statement on 01.12. 2021. From 01.12.2021 to 06.01.2023 written statement not filed on the side of petitioner. Hence petitioner called absent and set exparty on 06.01.2023. In spite of sufficient opportunity given to petitioner/ defendant, petitioner not filed written statement, hence the respondent was set exparty this case. No sufficient reason shown in this 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 terms.

In the result, this petition is allowed on condition that the petitioner has to pay a cost of Rs.1,000/- to the 1st respondent on or before 28.01.2025 failing which this petition stands dismissed. Call on 28.01.2025.

Dictated to my Steno – Typist, typed by her directly in computer, corrected and pronounced by me in open court, this the 23rd day of January 2025.

Sd/- R.D. Gurulakshmi,
23.01.2025
District Munsif,
Tiruttani.

Petitioner side Exhibits and Witnesses :- Nil
Respondents side Exhibits and Witnesses :- Nil

Sd/- R.D. Gurulakshmi,
23.01.2025
District Munsif,
Tiruttani.