

IN THE COURT OF THE DISTRICT MUNSIF, VANIYAMBADI

Present: Thiru V.ESHWAR, B.E.,LL.B.,
DISTRICT MUNSIF, VANIYAMBADI

Dated this the 18th day of July, 2025

I.A.No. 05/2024

in

O.S.No. 11/2022

S. Govindasamy

... Petitioner/Defendant

-versus-

K. Venkatachalapathy

... Respondent/Plaintiff

This petition having been taken on file on 19.02.2024 and coming before me for final hearing on 18.07.2025 in the presence of K.Ranjithkumar, Advocate for the Petitioner and Mr. R.V. Varadarajan, Advocate for the Respondent, and upon this petition having stood over for consideration till this day, this court doth deliver the following:

ORDER

This petition has been filed by the Petitioner/Defendant praying for an order to set aside the Ex parte order on 03.01.2024 and to order for the further proceedings in the above matter and to thus render justice.

Gist of the Petition:

1. The petitioner, who is the defendant in the main suit, has filed this application under Order IX, Rule 7 read with Section 151 of the Code of Civil Procedure, 1908, seeking to set aside the ex-parte order passed against him on 03.01.2024.
2. The crux of the petitioner's submission is that his absence before this court on 03.01.2024, which led to his being set ex-parte for non-filing of the written statement, was entirely unintentional and occasioned by a severe illness. He avers that on the said date, he was suffering from a high fever and sought initial treatment at the Government Hospital in Vaniyambadi. He states that he experienced extreme fatigue and was subsequently diagnosed with jaundice on the very same day.
3. The petitioner further submits that due to the severity of his condition, he was advised to seek advanced medical care, for which he was first taken to Walajah and thereafter to Nellore for further treatment. He contends that he was

completely indisposed and bedridden during this period and could only recover fully by 10.02.2024. It was only upon his recovery that he was able to contact his counsel and learned of the ex-parte order passed against him.

4. The petitioner asserts that he has a meritorious defence to the plaintiff's claim in the main suit and that if the ex-parte order is not set aside, he will be subjected to irreparable loss and hardship which cannot be compensated by any monetary terms. He, therefore, prays for the indulgence of this Court to set aside the order dated 03.01.2024 and permit him to participate in the proceedings, thereby ensuring justice is rendered.

Gist of the Counter:

5. The respondent/plaintiff has filed a detailed counter, vehemently opposing the petition. The respondent contends that the application is false, frivolous, and not maintainable either in law or on facts.
6. The respondent categorically denies the petitioner's averments regarding his illness. It is asserted that the claims of suffering from fever, being treated at the Government Hospital, Vaniyambadi, the subsequent diagnosis of jaundice, and undergoing further treatment at Walajah and Nellore are all baseless allegations and a fabrication concocted for the sole purpose of setting aside the ex-parte order.

The respondent points out the conspicuous absence of any medical certificate or documentary proof to substantiate the petitioner's claims of illness.

7. The respondent highlights the timeline of the proceedings, stating that the petitioner entered his appearance through counsel as early as 08.02.2022 and thereafter took numerous adjournments, spanning nearly 23 months, for the purpose of filing his written statement. It is argued that the petitioner was afforded ample and sufficient opportunity by this Court to file his defence, which he failed to utilize.
8. A significant legal objection raised by the respondent is that the present petition under Order IX, Rule 7 is not maintainable on its own. The respondent argues that since the petitioner failed to file his written statement within the statutory period prescribed by the Code of Civil Procedure, he ought to have filed an application seeking leave of the Court to condone the delay and receive the written statement, in addition to the present application. The respondent, therefore, prays for the dismissal of the petition with exemplary costs.

Point for Determination:

9. Having perused the pleadings and heard the submissions of the learned counsel on both sides, the sole point for determination in this application is that whether the

petitioner has shown "good cause" for his non-appearance on 03.01.2024, warranting the setting aside of the ex-parte order passed against him?

Discussion on point:

10. This Court has meticulously considered the rival contentions. The present application is filed under Order IX, Rule 7 of the Code of Civil Procedure, which empowers the Court to set aside an order declaring a defendant ex-parte upon such terms as to costs or otherwise as it deems fit, provided the defendant appears on a subsequent hearing and assigns "good cause" for his previous non-appearance. The term "good cause" is not defined in the Code, and its interpretation is left to the discretion of the Court, which must be exercised in a just and judicious manner. The underlying principle of this provision is to ensure that, as far as possible, a matter is adjudicated on merits rather than being disposed of on a technical default.
11. The petitioner attributes his absence on 03.01.2024 to a sudden and severe illness, namely fever which was subsequently diagnosed as jaundice, requiring extensive treatment. The respondent, in his counter, has cast considerable doubt on this explanation, primarily on the ground that no medical evidence has been produced to support the claim. While it is true that the petitioner has failed to annex any

medical certificate or discharge summary to his petition, which would have certainly lent greater credence to his averments, the law does not mandate that "good cause" can only be established through documentary evidence. The court can, in appropriate cases, accept the sworn affidavit of the party.

12. It is pertinent to note the respondent's argument regarding the prolonged delay of nearly 23 months taken by the petitioner to file the written statement. This Court cannot turn a blind eye to the conduct of the petitioner. The timeline of the case clearly indicates that the petitioner has been lethargic in prosecuting his defence. The numerous adjournments granted by this Court were not utilized, and this dilatory tactic deserves to be deprecated. However, the cardinal principle of natural justice, *audi alteram partem* (let the other side be heard), must be given paramount importance. The primary objective of the courts is to dispense substantial justice, and procedural laws are but handmaidens to this objective. A party should not be shut out from participating in the proceedings unless their conduct is contumacious and demonstrates a willful disregard for the court's authority.

13. In the present case, while the petitioner's past conduct is far from exemplary, the reason stated for the specific non-appearance on 03.01.2024 is a severe illness. It is plausible that a person suffering from jaundice would be indisposed and unable

to attend to their affairs, including court matters. Though unsupported by documents, the explanation offered in the affidavit cannot be dismissed as entirely unbelievable without affording an opportunity to the petitioner to substantiate his defence in the main suit.

14. The respondent has raised a legal plea that the petition is not maintainable without an accompanying application to condone the delay in filing the written statement. While it is the proper procedure to file such an application, the setting aside of an ex-parte order under Order IX, Rule 7 and the condonation of delay in filing the written statement are intertwined in the facts of this case. The effect of allowing this petition would be to relegate the parties to the position they were in on the date the petitioner was set ex-parte. It would then be open to the petitioner to take necessary steps to file his written statement, subject to the orders of this Court. Dismissing this petition solely on this technical ground would foreclose the petitioner's right to defend the suit altogether, which would be too harsh a penalty.
15. The Hon'ble Supreme Court of India has consistently held in a catena of judgments that the approach of the courts in matters of setting aside ex-parte orders should be liberal and justice-oriented. The potential prejudice to the respondent/plaintiff caused by the delay can be adequately compensated by way of costs. If the petitioner is denied an opportunity to contest the suit, he stands to

suffer an irreparable injury, as a decree would be passed against him without his defence being considered. Conversely, the prejudice to the respondent/plaintiff can be mitigated by putting the petitioner on terms.

16. After a careful and anxious consideration of all the facts and circumstances, and in the interest of substantial justice, this Court is of the considered opinion that one final opportunity should be granted to the petitioner to contest the suit on its merits. While the petitioner's lack of diligence in the past and his failure to produce medical records are noted with disapproval, the explanation of illness for his absence on the specific date of hearing is accepted as a "good cause" for the purpose of Order IX, Rule 7 of the C.P.C. The primary goal of the judicial process is the adjudication of disputes on merits, and this Court believes that shutting out the defendant at this stage would lead to a miscarriage of justice. However, the respondent must be compensated for the delay and the inconvenience caused.

Result:

17. In the result, this petition is **ALLOWED** on the following conditions:
- i. The ex-parte order passed against the petitioner/defendant on 03.01.2024 is hereby set aside.

ii. The petitioner shall pay a sum of Rs. 1,000/- (Rupees One Thousand only) as costs to the learned counsel for the respondent/plaintiff on or before the next hearing date.

The petition is allowed accordingly. For payment of costs, call on 01.08.2025.

Directly typed by me on my official laptop, corrected and pronounced by me in the Open Court, this the 18th day of July 2025.

**DISTRICT MUNSIF,
VANIYAMBADI.**

ANNEXURE:

Petitioner's side evidence: Nil

Respondent's side evidence: Nil

Petitioner's side documents: Nil

Respondent's side documents: Nil

**DISTRICT MUNSIF,
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