

**IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS
JUDGE, VELLORE, VELLORE DISTRICT.**

PRESENT: Tmt.G.Santhi, B.A., M.L.,
I Additional District and Sessions Judge,
Vellore.

Friday, the 20th day of December, 2024

I.A. No.3/2024 in O.S. No.89/2019
CNR.No.TNVL01-005423-2019

S. Jaisankar . . . Petitioner/Defendant

Versus

Chokkalingam . . . Respondent/Plaintiff

This petition is coming on 18.12.2024 before this court for final hearing in the presence of Thiru.M.V. Jagadeesan, Advocate for the Petitioner/Defendant, Thiru.S. Gunasekaran and Thiru.S.VijayaBaskar, Advocates for the Respondent/Plaintiff, upon hearing the arguments on both sides and upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

O R D E R

This petition filed on behalf of the Petitioners under Order 9 Rule 7 and Section 151 of C.P.C. to set aside the exparte order dated 04.09.2024 passed against the petitioner in the above suit.

2. Brief averments in the affidavit are read as follows:

This petitioner is the defendant in the above suit. In his affidavit, he

stated that the above case posted on 04.09.2024. Due to his illness, he could not contact his counsel. After contact his counsel, he came to know that in above case exparte order passed against him on 04.09.2024. His absence is neither willful nor wanton but due to that above reason. The petitioners therefore prays to set aside the exparte order dated 04.09.2024 passed against them in the above said suit.

3. Brief averments in the counter are read as follows:

The petition is not maintainable either in law or on facts in the circumstances of the case. Except the averments that are specifically admitted hereunder all other are denied and the petitioner is put to strict proof of the same. The respondent filed counter stating the the above case for posted for cross examination RW2, there is no representation on the side of petitioner. Hence the exparte order passed. The petitioner purposely allowed the suit to go further and he was silently watching the proceedings of this case and he has come forward with this petition as he thought that the suit will be decreed as prayed for. The petitioner not produced any document to show that he was suffering from viral fever, the reason stated by the petitioner is false one and he prays to dismiss the application.

4. The point to be decided is that, whether the petitioner has sufficient reason for non appearance of petitioner.

5. Both side argument heard. Records perused. The learned counsel for the respondent stated that the petitioner wantonly drag on the

proceedings and he requested to impose condition to deposit 50% claim amount.

6. On perusal of records, the case was posted for more than seven hearings for defendant side evidence. Considering the long pendency and chances given. The defendant called absent set exparte. Though the petitioner not produced any document to prove that he was affected by viral fever. Where as the learned counsel for respondent requested to impose 50% of claim amount. The case is pending at the stage of DW's stage. In this circumstances, the imposing condition to conduct the case in day to day manner is sufficient to dispose the case. Accordingly, the court concluded to allow this application of the following grounds.

As a result, the petition is allowed on cost of Rs. 500/- to be paid by the petitioner to the defendant within 7 days. The petitioner shall co-operate the court to conduct the proceedings in day-to-day manner for speedy disposal of this case.

Dictated by me to the Typist, typed by her in computer, corrected and pronounced by me in the Open Court, this the 20th day of December 2024.

Sd/- Tmt. G.Santhi
I Additional District Judge,
Vellore.