

**BEFORE THE PRINCIPAL DISTRICT COURT
VELLORE DISTRICT**

Present:- Thiru.M.Elavarasan
Principal District Judge

Thursday, the 04th day of September, 2025

I.A. No. 05 of 2024
in
I.A.No.04 of 2024
in
Probate O.P.No.23 of 2021

Mrs.Maragadham

. . . Petitioner/Petitioner

-VS-

1.Mrs.Amsaveni

2. Mrs.Gandhimathi

. . . Respondents/Respondents

This petition was coming before me on this day for hearing in the presence of Thiru G.Krishnamurthy, counsel for the petitioner and, Thiru.K.A.Sankaran, Counsel for the 1st respondent and, the 2nd respondent was called absent and set exparte on 20.03.2025 and, upon hearing the both sides and, upon perusing the relevant records, this court passes the following:-

O R D E R

Petition filed under Order 9 Rule 9 of CPC; to set aside the dismissal order passed in I.A.No.04 of 2024 dated 07.11.2024 and to restore the petition in I.A.No.04 of 2024.

2. Brief averments of the petition is as that the petitioner has filed the Probate O.P. which was dismissed for default on 04.01.2024. For which the petitioner has filed a petition in I.A.No. 04 of 2024 to set aside the dismissal order passed in main O.P. The petition in I.A.No.4 of 2024 was posted to 07.11.2024, on that day the petitioner was not able to attend the court and the Advocates are boycotting the court and therefore, the petitioner was called in open court and for not paying batta to the 2nd respondent, the petition was dismissed for default on 07.11.2024. The above reason is neither willful nor wanton and the dismissal order passed in I.A.No.04 of 2024 is liable to be set aside and prays to allow this petition.

3. Brief averments of the 1st respondent's counter is as that all the affidavit averments are denied except those that are admitted by the respondent herein. There is no acceptable or sufficient reason for non

appearance on 07.11.2024 and only to harass this respondent, the petitioner filed this petition and the petition is liable to be dismissed.

4. Heard both sides. Perused the material records. Considered the submissions.

5. Point for consideration is as to whether the petition to set aside the dismissal order passed in I.A.No.04.2024 is to be allowed or not?

6. This petition has been filed under order 9, Rule 9 of CPC to set aside the dismissal order passed in I.A.No.4 of 2024 dated 07.11.2024.

The main contention of the petitioner is that the petitioner was not able to attend the court on 07.11.2024 and on that day the Advocates are boycotting the court therefore, he was called absent and the petition was dismissed for default. On the other hand, the 1st respondent has filed his counter and stating that the petitioner has not given sufficient cause for non appearance on 07.11.2024 and the reason assigned by the petitioner is not acceptable one. Hence, the petition may be dismissed with cost.

7. Admittedly, the petitioner herein has filed the main petition in Probate O.P. No.23 of 2021 to probate the unregistered Will dated

23.01.2019. In which the main petition was posted for enquiry on 04.01.2024 and on that day the petitioner was called absent and the petition was dismissed for default. To set aside the dismissal order passed in main O.P. dated 04.01.2024, the petitioner filed a petition in I.A.No.4 of 2024 and the said petition was posted to 07.11.2024 for payment of R2 batta. On that day also, the petitioner was called absent and the petition was dismissed for default. Now the petitioner filed this petition to set aside the dismissal order passed in I.A.No.04 of 2024, dated 07.11.2024. On perusal of entire case records, it shows that the petitioner wantonly not appeared before the court and the petitioner again and again willfully left the case for dismissal. The reason stated by the petitioner for his absence is not acceptable one. Though, the petitioner did not file any document to prove his contention, in order to avoid multiplicity of proceedings one more opportunity to be given to the petitioner for proper adjudication and also in the interest of justice, I am inclined to allow this petition on conditional cost.

8. In the result:-

(i) This petition is allowed on payment of cost of Rs.3000/- to be paid to the 1st respondent directly on or before 11.09.2025, failing which this petition shall stand dismissed. Call on 12.09.2025.

Dictated by me to the Steno Typist directly, typed by her in computer, corrected and pronounced by me in open court on 04th day of September, 2025.

Principal District Judge
Vellore District

Annexure:

NIL

P D J
Vlr