

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
VELLORE, VELLORE DISTRICT.**

Present:- Thiru.M.Elavarasan
Principal District Judge

Friday, the 22nd day of August 2025

I.A.No.04 of 2025
in
A.S. No. 43 of 2024

R.Mary Latha . . . Petitioner / Appellant

-vs-

1. Syndicate Bank, Arani Road Branch,
represented by its Branch Manager,
having office at David Nagar, Vellore.

2. S.Anthony Francis . . . Respondents/Respondents

This petition was coming before me for final hearing on 14.08.2025 in the presence of Thiru.V.Rathina Kumar, counsel for the petitioner and Thiru.R.Goverthanan, counsel for the 2nd respondent, and the 1st respondent was called absent set exparte in the main appeal itself and the case was posted for counter of R2, counter not filed, upon perusing the relevant records, this court passes the following:-

ORDER

Petition filed under Order 8 Rule 9 of CPC, to receive the additional written statement of petitioner/2nd defendant.

2. Brief averments of the Affidavit:-

The petitioner herein is the appellant in the above appeal and 2nd defendant in the suit. The 1st respondent/plaintiff filed the suit in O.S.No.211 of 2019 for recovery of amount due under the loan document against the 2nd respondent. The 2nd respondent/1st defendant remained exparte and the suit was contested by the petitioner/2nd defendant and the trial court decree the suit as against which the petitioner/2nd defendant preferred an appeal before this court. At the time of filing written statement, the petitioner/2nd defendant not gone through the documents produced by the 1st respondent/plaintiff and immediately filed the written statement with available information. The petitioner/2nd defendant worked as a teacher, due to non availability of leave, she was unable to follow up the counsel for filing additional written statement and, thereafter, the trial was completed and the suit was decreed as prayed for. The signature of the 2nd respondent/1st defendant was vary each other in Exh.A5 to Exh.A8 and under Exh.A5, the printed form was printed during July, 2013 which was mentioned in upper left side corner but the Exh.A5 dated 10.12.2019, and, therefore, the Exh.A5 was not actually created on 10.12.2009 and it came to know only during the preparation of appeal.

The signature of the 2nd respondent/1st defendant are vary each other in the acknowledgement of debt dated 10.12.2009, 08.12.2012, 06.12.2015 and 02.12.2018 (Exh.A5 to Exh.A8), the signature of the 2nd respondent/1st defendant has to be compared with general agreement dated 12.12.2003 in Exh.A1 and agreement of guarantee dated 12.12.2003 in Exh.A2. Therefore, the 1st respondent/plaintiff must prove the genuineness of the signature of the 2nd respondent/1st defendant in Exh.A5 to Exh.A8, those facts were not pleaded in the written statement. Further, the petitioner/2nd defendant appointed new counsel for appeal and during the time of preparation of appeal memorandum lots of defects and irregularities were found in the Exh.A series therefore, it is necessary to file additional written statement in O.S.No.211/2019. Hence, this petition.

3. The 1st respondent was called absent set exparte in the main appeal itself and after notice to the 2nd respondent, the 2nd respondent was set exparte for non filing of counter.

4. The point for consideration in this petition is,

Whether the petition to receive additional written statement is to be allowed or not?

Point:-

5. This petition has been filed under Or.8, Rule 9 of C.P.C. to permit the petitioner to file additional written statement in the suit in O.S.No.211 of 2019 and pass further orders.

6. The main contention of the petitioner is that the 1st respondent/plaintiff filed the suit in O.S.No.211 of 2019 for recovery money and the said suit was contested by the petitioner/2nd defendant alone and the trial court decreed the suit. As against the decree and judgment the petitioner has preferred an appeal before this court. Further, the petitioner/2nd defendant has appointed new counsel for appeal and during the time of preparation of appeal memorandum lot of defects and irregularities were found in the Exh.A series therefore, it is just and necessary to file additional written statement in O.S.No.211/2019. Hence, this petition.

7. Though the respondents after received notice, they have not filed any counter or objection. The learned counsel for the petitioner would submit that the reception of additional written statement under Order 8, Rule 9 CPC at appeal stage is permissible and court should take lenient view while dealing an application under Order 8, Rule 9 CPC in appeal stage. To support his contention, the learned counsel for the

petitioner relied upon the judgment of our Hon'ble High Court, reported in 2005-4-MLJ 625 wherein it has been held as follows:-

Civil Procedure Code (V of 1908) – O.8, Rule 9 – Application before the trial court – For reception of additional written statement – Dismissal of – On technical grounds – Appellate Court allowing the petition – Court should take lenient view – Should have a positive and liberal approach – Conduct of party, stage of litigation, delay and hardship to be considered – No infirmity in the order.

Under what circumstances leave for filing additional written statement is to be granted and how the discretion has to be exercised depends on the facts and circumstances of each case and in all such cases, the party, who seeks leave, has to explain why this contention was not raised in the earlier pleadings. While exercising the discretion, the Court will consider the conduct of the party, stage of litigation, the delay that has occasioned and how far the opposite party will be put to hardship. The dictum laid down with regard to the powers of the Court in granting leave for filing additional written statement is that the Court should take a lenient view; it should be positive and should have a liberal approach.

Order 8, Rule 9 of CPC reads as follows:-

"No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

As per Order 8, Rule 9 CPC, after filing written statement, no additional pleading can be filed without permission of the court. The appellate court's main role is to examine the correctness of the trial court's judgment based on those pleadings and evidence of both side. Generally, at the appeal stage, no fresh pleadings are entertained. However, if something needs to be clarified the parties may seek relief of the court to file a petition under order 41, Rule 27 to receive additional evidence. Raising a new plea via subsequent pleadings is impermissible. So far this case is concerned, the 1st respondent had filed the above said suit against the petitioner and 2nd respondent for the relief of recovery of money with interest and for cost. As per the plaint averments, the petitioner/2nd defendant stood as a guarantor for the loan obtained by the 2nd respondent/1st defendant and the petitioner/2nd defendant had executed guarantee agreement for the said amount on 12.12.2003 and again the 2nd defendant had executed acknowledgment of liability in writing on 11.12.2006. The petitioner/2nd defendant had entered appearance through his counsel before the trial and filed a written statement stating that,

The 1st defendant is presently working as Head Master in RCM, Elementary School, Vadamathimangalam, Thiruvannamalai District and he is getting monthly salary of Rs.90,000/- (Rupees Ninety Thousand only). Further the 1st defendant is having several lakhs worth of movable and immovable properties. Therefore the plaintiff has to take stringent action against the plaintiff to attach the 1st defendant's month salary and his several lakhs worth of movable and immovable properties. But without doing so taking action against this 2nd defendant is highly illegal, unlawful and against Natural Justice also. The plaintiff has suppressed several material facts in this case hence on that ground also this Hon'ble court ought to have be dismissed this suit with heavy cost.

8. It is not the case of the petitioner that the plaintiff's bank forged his signature and created acknowledgement of debt for the purpose of filing this vexatious suit. Now the petitioner is trying to introduce the new case by way of filing this petitioner under Order 8 Rule 9 of CPC which can not be permitted. The Judgment referred by the learned counsel for the petitioner/2nd defendant is not applicable to the present case on hand. Of course, it is true that the petition under Order 8, Rule 9 of CPC can be entertained at the stage of appeal. If the petition is to

explain or clarify existing contention and not to introduce entirely new pleas or reframe the case. The petitioner has introduced new case which cannot be permitted under law. Therefore, for the reasons stated above, the petition filed by the petitioner is liable to be dismissed and this point is answered accordingly.

9. In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist, transcribed and computerized by her, corrected and pronounced by me in the Open Court, on this day the 22nd day of August, 2025.

Principal District Judge
Vellore District

Annexures :- NIL

P D J
Vlr.