

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE, VELLORE DISTRICT.

PRESENT: Tmt.P.Revathy, M.A.,M.L.,
Additional District Judge(FTC),Vellore.

Dated this the 29th day of February 2024, Thursday.

I.A.NO.5/2023 in
O.S.NO.5/2022

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S.Jeeva

.. Petitioner/ 30th Defendant

/versus/

M.Thiyagarajan

..Respondent/Plaintiff.

This petition is coming before me on 27.02.2024 for final hearing, in the presence of Thiru.M.R.Raman and Associates, Counsel for the Petitioner and of Thiru.C.Saranraj and Thiru.T.Sathyanarayanan, Counsels for the respondent and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following:-

ORDER

This petition filed by the Petitioners under Order.9, Rule.17 and Sec.151 of CPC prays to set aside the exparte order as against the petitioner/D30 and permit the petitioner to defend the main case.

2. The affidavit averment is as follows :

The petitioner herein is the 30th defendant in the main suit. The respondent herein has filed the suit with an intention to grab the suit property which was purchased on 13.05.1998 by his father late Selvaraj. After receiving the court summon, this petitioner fell ill and he could not appear before this court and he came to know about the exparte order against him through his counsel. Hence the petitioner filed this petition to set aside the exparte order as against the petitioner and prays to allow the petition.

3.The brief averments of the counter filed by the respondent is as follows:-

This petition is not maintainable either in law or on facts. All the affidavit averments are denied except those that are admitted by the respondents herein. Even though this respondent had received the summons had not appeared before this court either by person or through his advocate, hence on 04.03.2022 this court passed an exparte order as against the petitioner. Defendants No.27 to 30 are the sons and daughters of Mr.Selvaraj and the 26th defendant is the wife of Mr.Selvaraj where he had purchased the joint family property of this respondent during the lis-pendens of the previous suit in O.S.No.347/1992. Hence Mr.Selvaraj is treated to be an illegal purchaser before the court of law. As the above said Selvaraj had died, this defendants who are the legal heirs had been arrayed as a party to the above suit.

The defendants 26 and 30 were called absent set exparte on 04.03.2022 in the above suit. Later on this court sent fresh notice to defendants 27 to 29 through court and post on 08.04.2022 and later on 10.06.2022 the defendants 26 to 30 had filed vakalat, but this court had returned the same stating that the defendants 26 and 30 had already been set exparte, hence the concerned counsel had made necessary changes and had represented it on 10.06.2022 itself. Hence this petitioner is very well aware of the proceeding and the orders which had been passed against him in the above suit. This petitioner has filed this petition after a lapse of 1.7 years which is not sustainable and should not be entertained. Moreover the petitioner is bound to explain each and every day delay with proper material evidences and this respondent prays to dismiss the petition.

4. The point for consideration in this petition is,

1. Whether the petition is to be allowed or not?

5. **Point:**

The petitioner stated that after receiving the court summon, this petitioner fell ill and he could not appear before this court and he came to know about the exparte order against him through his counsel and hence filed the petition to setaside the exparte order passed as against him.

But the respondent denied the allegations and stated that this petitioner is very well aware of the proceeding and the orders which had been passed against him in the above suit. This petitioner has filed this petition after a lapse of 1.7 years which is not sustainable and should not be entertained. Moreover the

petitioner is bound to explain each and every day delay with proper material evidences.

On perusal of records it is seen that the petitioner herein is the 30th defendant in the suit and some of the defendants have not filed the written statement and petition for rejection of plaint also pending in I.A.No.4/2023. Even though the respondent stated that the petitioner has filed this petition after a lapse of 1.7 years which is not sustainable and should not be entertained. Moreover the petitioner is bound to explain each and every day delay with proper material evidences, the petitioner herein was set exparte on 04.03.2022 and the petition to set aside the exparte order was filed by the petitioner herein on 10.08.2023 and on 11.08.2023 the case was posted for statement of D1, D2, D7, D10, D12 to D.16, D19, D21 to D.25, D31 to D34, D36, D39 and D41 to D.44. Hence there is no final order passed in the above suit and the suit is till date pending and for filing petition to set aside the exparte order, there is no limitation when the suit is pending. But since the respondent has not made any serious objections for setting aside the exparte order as against the petitioner herein and in order to avoid further delay the present petition may be allowed on conditions.

6. In the result, this petition will be allowed on conditions that the petitioner shall pay a sum of Rs.200/- to the respondent's counsel directly on or before 13.03.2024 and to file the written statement on or before 13.03.2024

failing compliance of any one of the conditions, the petition shall stand dismissed. Call on 13.03.2024.

Dictated to the Steno Typist, typed by her directly through computer, corrected and pronounced by me in open court, this the 29th day of February 2024.

**Additional District Judge(FTC)
Vellore.**

Both side Witness and Documents:

NIL

**Additional District Judge(FTC)
Vellore.**

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE, VELLORE DISTRICT.**

**PRESENT: Tmt.P.Revathy, M.A.,M.L.,
Additional District Judge(FTC),Vellore.**

Dated this the 29th day of February 2024, Thursday.

**I.A.NO.5/2023 in
O.S.NO.5/2022**

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S.Jeeva, aged 37 years, S/o.V.Selvaraj, Residing at No.96, New Street,
Palavansathu Kuppam, Vellore.

.. Petitioner/ 30th Defendant

//versus//

M.Thiyagarajan, aged 50 years, S/o.M.Murugesan, permanently residing at
No.13/8, P.M.Chetty Street, Saidapet, Vellore – 632 012.

..Respondent/Plaintiff.

This petition filed by the Petitioners under Order.9, Rule.17 and
Sec.151 of CPC prays to set aside the exparte order as against the petitioner/D30
and permit the petitioner to defend the main case.

This petition is coming before me on 27.02.2024 for final hearing, in
the presence of Thiru.M.R.Raman and Associates, Counsel for the Petitioner and
of Thiru.C.Saranraj and Thiru.T.Sathyanarayanan, Counsels for the respondent
and upon hearing the arguments of both sides and upon perusing the entire case
records and having stood over for consideration, till this date this court doth
order and decreetal order as follows:-

DECREETAL ORDER

1. That the petition will be allowed on conditions that the petitioner shall pay a sum of Rs.200/- to the respondent's counsel directly on or before 13.03.2024 and to file the written statement on or before 13.03.2024 failing compliance of any one of the conditions, the petition shall stand dismissed. Call on 13.03.2024.

Given under my hand and the seal of this court, this the 29th day of February 2024.

**Additional District Judge(FTC)
Vellore.**