

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

**PRESENT: Thiru.P.V.Sandilyan, M.L.,
Additional District Judge (FTC), Vellore.**

Wednesday, the 10th day of September, 2025

I.A. No.3/2024 in I.A. No.1/2023 in O.S. No.235/2023

S.J.Perumal . . . Petitioner/Defendant

Versus

M.Munisamy . . . Respondent/Plaintiff

This petition came up before this court for final hearing on 01.09.2025, in the presence of Thiru.N.Raviraman, Counsel for the Petitioner and Thiru.K.M.Boopathi, Counsel for the Respondent and upon hearing the arguments of both sides, upon perusal of case records and having stood over for consideration till this date, this court delivers the following:-

ORDER

This petition has been filed by the petitioners under Order IX Rule 7 and Section 151 of C.P.C. to set aside the exparte order dated 12.08.2024 passed in the above petition against the petitioner and permit the petitioner to contest the same on merits.

2. The averments of the affidavit are as follows:-

The petitioner is the defendant in the above suit, filed by the respondent for

recovery of money with cost. Pending suit, the respondent filed the above petition for attachment before Judgment. When the above petition was posted for filing Counter on 11.08.2024, the petitioner was suffered with severe jaundice and taken natural treatment at Walajapet from the first week of June-2024 till the end of August-2024 and due the above said disease for long time and weakness, he was unable to move away from the house and unable to inform the same to his counsel. Hence, on 12.08.2024, this court passed an exparte order against the petitioner due to his non-appearance and he came to know about the said facts through his counsel only in the end of August-2024. The petitioner has got fair chances of success in the above suit. Hence, filing this petition to set aside the exparte order dated 12.08.2024 passed in the above I.A. No.1/2023 and permit the petitioner to contest the above petition on merits.

3. The brief averments of the Counter filed by the Respondent/Plaintiff are as follows:-

This petition is not at all sustainable either in law and on facts. The petitioner is closely watching the proceedings and deliberately remain exparte and now filing this petition only to drag on the proceedings and there is no record filed where the petitioner taken the country treatment due to ill-health and prayed to dismiss the petition with cost.

4. There is no oral evidence on both sides.

5. The point for consideration in this petition is, ***whether this petition to set aside the exparte order filed under Order IX Rule 7 and Section 151 C.P.C. to be allowed and exparte order passed against the petitioner dated 12.08.2024 is to be set aside?***

6. Point:-

6.1 It is seen from the materials that the respondent herein filed the above petition for attachment before judgment and when the petition came up for filing of counter on 12.08.2024, the petitioner herein failed to file counter and so an exparte order was passed against him. Hence, this application to set aside the exparte order.

6.2 It is stated by the petitioner in the petition that since the petitioner was suffered with severe jaundice and taken natural treatment at Walajapet from the first week of June-2024 till the end of August-2024 and due the above said disease for long time and weakness, he was unable to move away from the house and unable to inform the same to his counsel and file his counter before this court on 12.08.2024. The learned counsel for the petitioner would submit that the petitioner is having merits in the suit and for the same is tried and disposed on merits will succeed in the suit and he also would submit that one more opportunity may be afforded to the petitioner to contest the suit and prayed to allow this application, so as to enable the petitioner to contest the suit.

6.3 On the other hand, the learned counsel for the respondent would submit that the petitioner deliberately remained exparte and now come with petition only to drag on the proceedings and there is no evidence to show where the petitioner taken the country treatment for his ill-health and prayed to dismiss the petition with cost.

6.4 Considering the facts and circumstances of the case, now the petitioner/defendant filed his counter refuting the claim of the respondent and stated that the petitioner is having fair chances to succeed in the suit if the same is tried on merits. Hence, this court is of the view to consider the request of the petitioner and to allow this application so as to afford an opportunity to the petitioner to defend the suit. Accordingly, this point is answered.

In the result, this petition is allowed. No costs.

Dictated to the Steno-Typist, transcribed by him, corrected and pronounced by me in the Open Court, on this the 10th day of September, 2025.

**Sd/- P.V.Sandilyan,
Additional District Judge (FTC),
Vellore.**

Both side Witnesses and Exhibits:- - NIL -

**Sd/- P.V.Sandilyan,
Additional District Judge (FTC),
Vellore.**