

IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,
DISTRICT MUNSIF, KATPADI

Thursday, this the 14th Day of December – 2023

I.A.No. 03 of 2023
In
I.A.No. 02 of 2023
In
O.S.No. 19 of 2018
(CNR.No.TNVL23-000029-2018)

P.Jaya

.....Petitioner/Respondent/1st Defendant

-Vs-

1. C.Saroja
2. C.Jayaraman
3. C.Ravichandran

.....Respondents/Petitioners/Plaintiffs

This petition has come up today before this Court for orders, and upon hearing the argument of Thiru. A.Karthikeyan, the Counsel for the Petitioner, and Thiru. S.Babu, the Counsel for the respondents, and upon perusing the petition, counter, and the available case records, and having stood over for consideration till this date, this Court passes the following:-

ORDER

This petition has been filed by the Petitioner/1st Defendant under Order 9 Rule 7 and Section 151 of CPC to set aside ex-parte order passed against her on 05.04.2023 in above I.A.No.2/2023.

1. **Brief averments of the affidavit filed by the petitioner is as follows:-**

The petitioner is the 1st defendant in the above suit and she states that the above case stands posted to 05.04.2023 for filing of his counter on his side. The vehicle in which the

petitioner traveled to attend this Court has suddenly broken down, and hence she could not able to appear before this Court on 05.04.2023 when the above case is called in the open court, and this Court passed ex-parte order against her on 05.04.2023, and the non appearance before this Court on that date is not willful nor wanton but by reasons stated supra which is beyond her control and the same is condonable one. Hence, the petitioner filed this petition to set aside the ex-parte order dated 05.04.2023 against her and permit her to file the counter.

2. **Brief averments of the counter filed by the 2nd respondent is as follows:-**

(Adopted by the respondents-1 & 3)

The petition filed by the petitioner to set aside the ex-parte order is not sustainable either in law or on facts of the case. The respondent denies the all allegations made in the petition affidavit, and states that they have filed the petition to receive additional documents and the same was admitted in I.A.No. 2 of 2023 and this Court posted the above petition for filing counter, and the petitioner took time for filing counter and leave ex-parte, and she has been watching the Court proceedings and had chosen to file the above petition belatedly and she has filed the above petition only to drag on the proceedings and to harass the respondents, and there are no merits or bonafides in the above petition and she has not come to this Court with clean hands, and prays to dismiss the petition with costs of the respondents.

3. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this court.

4. **Point for Consideration:-**

- a) Whether the petition is entitled to be allowed or not?

5. **Answering to the Point:-**

Both sides has been heard. Records perused. Upon careful analysis of the entire case records including the petition, counter and upon considering the arguments on either sides, it is found that the present petitioner is the 1st respondent, and the respondents herein are the petitioners in the above petition in I.A.No.2/2023, and the said petition is filed for filing the documents.

6. It reveals from the records that in the above receiving documents petition, the notice was duly served on the 1st respondent, and this Court adjourned the above petition for filing Counter on 20.01.2023, 08.02.2023, 01.03.2023, and lastly on 05.04.2023, this Court observed as already more than sufficient time granted but the 1st respondent had not filed her counter and set her ex-parte, and posted the above petition for batta for 2nd respondent. When the said petition was pending at the stage of Counter of 2nd respondent, the 1st respondent/the present petitioner has come forwarded with this present petition before this Court.

7. Things are being so, in the petition affidavit, the petitioner had stated that on 05.04.2023 the petitioner's vehicle had suddenly broken down and hence she could not able to appear before this Court on that date, is not acceptable reasons which is not supported with any evidences. The respondents in their counter stated that the above petition filed only to drag on the proceedings and to harass the respondents and prayed to dismiss the petition with costs.

8. In the present case on hand, the present petitioner was set ex-parte on 05.04.2023 but the present application to set aside was filed on 23.06.2023 i.e., after lapse of 2½ months. But till such time no order was passed and the above petition was pending at the counter of 2nd respondent. It is settled position that even if the petitioner has not assigned specific reason for

non-appearance and non filing of the counter in the set aside application under Order 9 Rule 7 of CPC, it is open to the Court to condone the absence of the petitioner and to set aside the ex-parte order passed against her and permit her to take part in the proceedings at any stage of the proceedings.

9. From the above discussions, this Court is inclined to set aside the ex-parte order passed against the petitioner in the above petition on 05.04.2023 on terms of conditions. Accordingly, the point is answered in favour of the petitioner.

10. **Result:-**

In fine, in the interest of justice, this Court is inclined to allow this petition by setting aside the ex-parte order dated 05.04.2023 passed against the petitioner/1st respondent on condition that the petitioner shall pay a sum of Rs.2,000/- payable to the respondents/petitioners on or before 20.12.2023, if failing which this petition shall stand dismissed without any further reference. Call on 03.01.2024 for reporting compliance.

-//Dictated to the Steno-typist and typed by her computer and after rectification taken print out and pronounced by me in the Open Court, on this the 14th day of December - 2023.//-

DISTRICT MUNSIF
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Both sides documents and witnesses: **NIL**

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