

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,
(J.O.Code - TN02266)
DISTRICT MUNSIF, KATPADI**

Thursday, this the 23rd Day of January – 2025

**I.A.No. 2 of 2024
In
O.S.No. 15 of 2024
(CNR.No.TNVL23-000041-2024)**

K.Subramani

.....Petitioner/Sole Defendant

-Vs-

Govindasamy

.....Respondent/Plaintiff

This petition has come up today before this Court for orders, and upon hearing the argument of Thiru. J.Arumugam, the Counsel for the Petitioner/Defendant, and Thiru. R.Nepolean, the Counsel for the Respondent/Plaintiff, 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/Defendant under Order 9 Rule 7 r/w Section 151 of Code of Civil Procedure to set aside the Ex-parte order passed against him on 06.08.2024.

1. **Brief averments of the Affidavit filed by the Petitioner is as follows:-**

1.1 The Petitioner states that he is the absolute owner and he is in possession and enjoyment of the Suit Schedule property mentioned in the Plaint, and the Plaintiff has filed the above false Suit as against him. In the above Suit, the summons was served on his family member who is un-educated and village habitant's and she did not informed the receipt of summons to him. Hence, the Petitioner was not aware of the hearing date on 06.08.2024. Later, the Petitioner was found the summon copy only on the said date in the evening time, and then, he enquired his family members and came to know that one of his family members had received the summon and forgotten to inform him.

1.2 Subsequently on the same day evening 06.08.2024, the Petitioner met his advocate and check the status of the case on website and came to know that this Court was pleased to place him as Ex-parte on 06.08.2024 and posted the case for Plaintiff side evidence on 13.09.2024. Further, the Petitioner states that he have got good defence in the above Suit, and his absence before this Court on the above said is only for the above said bonafide reasons, and the same is beyond his control and prayed to set aside the Ex-parte order passed against him on 06.08.2024.

2. **Brief averments of the Counter filed by the Respondent is as follows:-**

2.1 The petition filed by the Petitioner is not maintainable either in law or on facts and liable to be dismissed in-limini. The Respondent denies the entire averment

made in the petition affidavit as false, frivolous and concocted imaginary one, and put the Petitioner to strict proof of the same. The Respondent states that he is having title and is in possession and enjoyment of the Suit Schedule mentioned property and he already briefly narrated the said facts in the Plaint.

2.2 The receipt of summon by his family members and they forgotten to inform the same to the Petitioner as the reasons stated in the petition affidavit are not genuine and the same was pleaded by the Petitioner only for filing this petition. The present petition filed by the Petitioner is only to cause delay and latches to the stage proceedings of the case and the same is devoid of merits and he prayed to dismiss the petition.

3. Neither the Petitioner nor the Respondent had 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 side has been heard. Records perused. Upon careful analysis of the entire case records including the petition, counter and upon considering the arguments, it is found that the present Petitioner is the Defendant and the Respondent herein is the Plaintiff in the above O.S.No. 15 of 2024.

6. It reveals from the records that in the above Suit, the summons was duly served on the Petitioner/Defendant's son namely S.Elumalai on 06.07.2024 and the

postal acknowledgment was served directly to the Defendant on 26.07.2024 for the hearing of the case 30.07.2024. On subsequent hearings i.e., 06.08.2024 this Court observed the service made to the Defendant and called him and recorded the non appearance of the Defendant and set him as Ex-parte and posted the case for Ex-parte Evidence on 13.09.2024. At this juncture, the present petition has been filed by the Petitioner/Defendant before this Court on 16.08.2024 to set aside the Ex-parte order passed against him on 06.08.2024.

7. Things are being so, in the petition affidavit, the Petitioner has stated that the Suit summons served on his family member who is un-educated and village habitant's, and they did not informed the receipt of summons to him and he was not aware of the hearing date i.e., 06.08.2024, is not acceptable as per Court records. It is evident from Served Acknowledgment Card, the summon was duly served on the Defendant on 26.07.2024 for the hearing of the case 30.07.2024.

8. It is noteworthy to point out that though the Petitioner/Defendant has stated in the petition affidavit that he have got good defence in the above Suit and filed this petition on 16.08.2024 before this Court, but till date the Defendant has not filed his Written Statement in this Suit to prove his bona-fide.

9. From the above material facts, it is evident that the reasons assigned in the petition by the Petitioner are not proper, and the same was not substantiated with documents for his non-appearance in Court on that date. But, the petitioner has filed this

petition within 30 days from the date of Ex-parte order. At this juncture, it is inevitable to this Court to refer the Judgment of our **Hon'ble High Court of Madras** in **N.Ramanathan Vs. Meenakshisundaram**, reported in **2001 (4) CTC Page 8**, wherein held as follows:-

“Code of Civil Procedure, 1908, Order 9, Rule 7 of CPC – Defendants against whom exparte order was passed filed application before trial court to set aside such exparte order – Rule contemplates that such petition could be allowed on costs as suit was pending – Obstructing defendants from participating in suit would be unreasonable – Exparte order should be set aside on costs even if defendants failed to substantiate reasons for non appearance in court and it would be in accordance with principles of natural justice.”

9.1 In the above Judgment, our **Hon'ble High Court of Madras** has further held that:

“even if the defendant is not in a position to substantiate the reason assigned for his non-appearance, his right to participate in the pending trial proceedings cannot be denied.”

10. In another Judgment of our **Hon'ble Madras High Court** in **Valleeswari Vs. Kamalakannan**, reported in **2010 (1) MWN (Civil) 581**, wherein held as follows:-

“10. The learned counsel appearing for the second defendant rightly makes out a difference in the rigors of Order 9 Rule 13 of CPC and the liberal

constriction which is warranted under Order 9 Rule 7 of CPC, it is a case where the proceedings are still pending adjudication. But after the termination of the lis, the plaintiff or the defendant invokes the provision under Order 9 Rule 7 or Order 9 Rule 13 of CPC, as the case may be. When the suit is terminated and the party concerned knocks at the doors of this Court to set aside the decree passed or to restore the Suit which was dismissed for default, a rigorous test would be applied to weigh the veracity of the reason given for the non-appearance of the party concerned. Considering the fact the suit is pending adjudication and no prejudice will be caused to the other side, the petition filed under Order 9 Rule 7 of CPC is liberally construed.”

11. As per the above judgments of our Hon’ble High Court of Madras, it is made clear that even if the Petitioner/Defendant has not assigned specific reason for non-appearance and non filing of the Written Statement in the set aside application under Order 9 Rule 7 of CPC, it is open to the Court to condone the absence of the Defendant and set aside the Ex-parte order passed against him, and permit him to take part in the proceedings at any stage of the proceedings.

12. Considering the stage of the Suit, and to dispose off the Suit on merits by giving opportunity to both parties, and also following the above Judgments of Our Hon’ble High Court of Madras, this Court is inclined to set aside the Ex-parte order passed against the Petitioner/Defendant in the above Suit on 06.08.2024 on heavy terms

of considering the expenses will caused to the Respondent, on account of this petition. Accordingly, the point is answered in favour of the Petitioner.

13. **Result:-**

In fine, in the interest of justice, this Court is inclined to allow this petition by setting aside the Ex-parte order dated 06.08.2024 passed against the Petitioner/Defendant on condition that he shall pay a sum of Rs.1,000/- payable to the present Respondent/Plaintiff on or before 05.02.2025, if failing which this petition shall stand dismissed without any further reference. Call on 18.02.2025 for reporting compliance.

-//-Dictated to the Steno-typist, transcribed and computerized by her, corrected and pronounced by me in the Open Court on this the 23rd Day of January – 2025.//-

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both sides documents and witnesses: NIL

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI