

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., LL.M.,
Additional District Judge,
Srivilliputtur.**

Monday, the 21st day of August 2023

I.A.No. 4/2023

in

O.S. No. 139/2010

.....

John Rajkumar

.. Petitioner / 3rd Defendant

.. VS ..

Thanraj

.. Respondent / Plaintiff

This petition came before me for final hearing on 14.08.2023 in the presence of Thiru.P. Pandiselvam, Advocate for the petitioner, and of Thiru.A.S. Chandrasekaran, Advocate for the respondents, and upon hearing arguments on both side and perusing the case records, this Court passed the following

ORDER

This is a petition under Order 9 Rule 7 and Section 151 of IPC to set aside the exparte order dated 22.10.2010.

1) Averments in the petition in brief are as follows:

The petitioner is the 3rd defendant in the suit. The petitioner was set exparte for not filing written statement on 22.10.2010. The petitioner has appeared through his Counsel in I.A. No. 3/2023 on 21.02.2023. The 3rd defendant filed his written statement on 25.04.2023 after the plaintiff filed the amended plaint and the written

statement was not received as the petitioner was exparte in the suit. Hence the petitioner seeks to set aside the exparte order dated 22.10.2010.

2) Averments in the counter statement filed by the respondent in brief are as follows :-

The reasons stated by the petitioner is not satisfactory. The petitioner should explain each and every day's delay. The petitioner was set exparte on 22.10.2010 and now after 12 years the petitioner has come forward with this petition with an intention to harass the plaintiff and in order to extort money from the respondent/plaintiff. Hence prays to dismiss the petition.

3) No oral or documentary evidence were let in on either side. Heard both side. Records perused.

4) Points for Consideration

1. Whether the exparte order against the petitioner / 3rd defendant is to be set aside as prayed for?
2. Whether the petition is to be allowed or not?

5) Points and answer :-

The petitioner is the 3rd defendant in the suit. The suit was filed for specific performance. The petitioner was set exparte as early as on 12.10.2010. The petitioner had not taken any steps to set aside the exparte order. Whiles the respondent/plaintiff filed a petition to amend the schedule property and regarding certain additional averments to be added to the plaint in I.A. No. 3/2022 and hence notice was ordered to this petitioner / 3rd defendant also. Merely because the

petitioner filed his vakalat in the interim application will not entitle him to appear in the suit. Only after notice was issued by this court in the amendment petition, the petitioner had come forward to appear with his counsel. Hence the contention of the petitioner as if he is entitled to file written statement since he had filed his vakalat in interlocutory application is not sustainable. This petition has been filed after 12 years delay. Since the suit is still pending trial and is being contested by other defendants, the petitioner need not file an application for condonation of delay. But still the petitioner is entering appearance in the suit after a lapse of 12 years from the date on which suit summon was served on him. However in order to grant one more chance to the 3rd defendant this court is inclined to set aside the exparte order passed against the petitioner / 3rd defendant. Even then the lethargic attitude of the petitioner in keeping silence for more than 12 years without taking any steps to set aside the exparte order passed against him needs to be suitably addressed and suitable costs has to be imposed on the petitioner / 3rd defendant.

In the result, the petition will be allowed on payment of Rs.2000/- as costs to the District Mediation Centre, Srivilliputtur on or before 30.08.2023 failing which the petition shall stand dismissed. Further hearing call on 31.08.2023.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 21st day of August 2023.

Additional District and Sessions Judge,
Srivilliputtur.

*Additional District & Sessions Court,
Srivilliputtur,
I.A. 4/2023 in O.S. No. 139/2010
ORDER (Web copy)
Date: 21.08.2023*