

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

**Present: Thiru B.C. Gopinath, M.L.,
Additional District and Sessions Judge,
Srivilliputtur.**

Wednesday, the 1st day of June 2022

I.A.No.3/2022

in

O.S.106/2014

.....

V.G. Ganesan

... Petitioner / 5th Defendant

/vs/

K.R. Kannan

... Respondent / Plaintiff

This petition came up before me for final hearing on 21.04.2022 in the presence of Thiru.P. Saravanan, Advocate for the petitioner and Thiru.S. Parthasarathy, Advocate for the respondent 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 CPC to set-aside the exparte order against the petitioner/5th defendant passed on 09.12.2021.

1) Case of the Petitioner in brief:

The Petitioner is the 5th Defendant in the suit. The respondent/plaintiff has laid the suit for partition. The petitioner was added as 5th defendant as per order in IA. 84/2019 dated 27.02.2022. The suit was posted for filing the petitioner / 5th defendant's Written Statement. On account of the pandemic and as he could not secure important documents from the Sub

Registrar's Office he was unable to file his written statement. Therefore he was set exparte on 09.12.2021. If the exparte order is not set aside, the petitioner will be prejudiced. On the other hand there cannot be any serious objections for the respondent/plaintiff.

2) Counter averments in brief is as follows:

The petition is not maintainable in law or on facts. The averment that the petitioner was impleaded as per order in IA. 84/2019 is true. But the averment that due to pandemic and as he was not able to get documents from the Sub Registrar Office concerned, he was unable to file his written statement is not true. The petitioner had engaged an Advocate even when he was sought to be impleaded and he had sufficient time to file his Written Statement. But however he has come out with certain reasons for not filing the written statement and therefore the petition which lacks merits should be dismissed.

3) This Court has heard both side and perused the materials on record.

4) Now the point for consideration is whether exparte order passed against the petition on 09.12.2021 can be set aside or not?

5) POINT:

From the records it is seen that the respondent/plaintiff K.R. Kannan originally laid the suit in the year 2014 against one R. Krishnammal and 2 others. During the pendency of the suit the said Krishnammal died on 12.05.2020. Later the petitioner along with the 4th defendant in the suit named K. Krishnamoorthi were impleaded as defendants 4 & 5 on the ground that they purchased a part of the suit property. The petitioner engaged a counsel as early as on 24.03.2021, but did not file his written statement till 09.12.2021 hence he was set exparte for non-filing of written statement on 09.12.2021.

6) The reasons assigned by the petitioner / 5th defendant V.G. Ganesan is that he was unable to prepare Written Statement on account of pandemic and he was unable to get some documents from the Sub Registrar Office. These reasons are apparently not convincing as the period in which the petitioner was supposed to file his written statement was much after the pandemic restrictions were lifted. That apart, he has to blame himself for not getting the required documents in time. Though the reasons are not satisfactorily, it has been the mandatory of the Hon'ble Supreme Court that "sufficient cause" should be viewed liberally for advancing substantial justice. Therefore this Court is inclined to grant an opportunity to the petitioner / 5th defendant to contest case on the merits as he has filed his written statement along with this petition, subject to terms.

In the result, the petition is allowed on condition that the petitioner pays Rs.500/- as costs to the respondent on or before 14.06.2022 failing which the petition shall stand dismissed. Call on 15.06.2022.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 1st day of June 2022.

Additional District and Sessions Judge,
Srivilliputtur.

I.A. 3/2022
in
OS.106/2014
Fair/Draft COMMON ORDER
Dated: 01.06.2022
Additional District & Sessions Court,
Srivilliputtur.