

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, VIRUDHUNAGAR

**Present : Tmt.S.K.ANGALAESWARI, B.A., B.L.,
ADDITIONAL DISTRICT JUDGE,
VIRUDHUNAGAR.**

Thursday, the 24th day of July, 2025

**I.A.No.02/2023 in
OS.No.17/2022**

Rajasekar ... Petitioner/5th Defendant

Vs

1. Alagarsamy alias Alagirisamy
2. Jeyaprakash
3. Maheswari
4. Munipandi
5. Gopalakrishnan
6. Rajalakshmi
7. Ramani
8. Gurusamy
9. Rajendran
10. Krishnasamy
11. Esthar Lilli Pushpam
12. The joint Sub-Registrar No.2
Virudhunagar.
13. District Registrar,
Virudhunagar

... Respondents/Defendants

This petition came up before me on 22.07.2025 for final hearing in the presence of Thiru.C.Rajaperumal, learned advocate for the petitioner and Thiru.J.Marikumar, learned advocate for the 1st Respondent and Thiru.R.Sankaranarayanan, learned advocate for the 2, 3rd Respondents, and 4 to 13 Respondents remained exparte and upon considering all material records in this case and having stood over till this day for my consideration, this court deliver the following . . .

ORDER

This Petition is filed under Order 9 Rule 7 of CPC by the Petitioner/5th Defendant to set aside the exparte order dated 25.04.2022 passed against him.

2) The averments of the Petition affidavit in brief are as follows:

The Petitioner states that he is a 5th defendant in Original Suit. He was residing at America due to his profession. The respondent filed the main suit against him and others seeking an order of declaration and permanent injunction regarding the suit property and the same were posted for appearance of the defendants on 25.04.2022 which was known to him on the affixture of summons by the court officials on his home and he known about the facts of the case after he returned from America. Therefore he contact his advocate to enquire about the main suit and he was made to understand that the court passed an exparte order on 25.04.2022 against him. His non-appearance is neither wilful nor wanton. He having valid case in the main suit, the exparte order had to be set-aside. Otherwise he will be put to irreparable loss and much hardhsip. Therefore, the petition has been filed by the petitioner/defendant to set aside the exparte order dated 25.04.2022.

3) The averments of the Counter affidavit filed by 1st Respondent in brief are as follows:

The petition filed by the petitioner is not maintainable on the basis of legal and reasonable grounds. It is denied that all the circumstances stated by the petitioner in the petition, except those expressly admitted by the respondent as true, are untrue. An exparte order has been issued against the petitioner only because he did not appear in court after receiving a court summons on 25.04.2022. The filing of the petition after a long period of time about 10 months is not acceptable. The petitioner has not filed any document in support of the petitioner's circumstances because the petition

circumstances are false. The petitioner/5th respondent has no right or qualification to conduct the case. He has filed the above petition in order to waste time by not pursuing the case, as it would be detrimental to him if he were to pursue it. Therefore, the petition should be dismissed with costs to the Respondent/Plaintiff.

4) The averments of the Counter affidavit filed by 2nd and 3rd Respondents in brief are as follows:

The petition filed by the petitioner is not maintainable on the basis of legal and reasonable grounds. It is denied that all the circumstances stated by the petitioner in the petition, except those expressly admitted by the respondent as true, are untrue. An ex parte order has been issued against the petitioner only because he did not appear in court after receiving a court summons on 25.04.2022. The filing of the petition after a long period of time about 10 months is not acceptable. The petitioner has not filed any document in support of the petitioner's circumstances because the petition circumstances are false. The petitioner/5th respondent has no right or qualification to conduct the case. He has filed the above petition in order to waste time by not pursuing the case, as it would be detrimental to him if he were to pursue it. Therefore, the petition should be dismissed with costs to the 1, 2 Respondents/1, 2 Defendants.

5. Point for consideration:

1. Whether this petition is to be allowed or not?

6. Points :

- i. Heard both side Argument. Petition affidavit and Counter affidavit filed by the Petitioner and Respondent and also records available in this case were perused.
- ii. For the sake of convenience the parties are arrayed as per their rank in the suit.

It is case of the 5th defendant that while the above suit in O.S.No.17/2022 posted for appearance of him on 25.04.2022, he unable to appear before this court due to his non availability in India the summon was affiix in his home and also office. Subsequent suit hearing only he know the above said fact and filed this petition. Hence he prayed before this court to set aside the exparte order passed againt him on 25.04.2022.

On contrary to the above said submission the contention of the plaintiff, 1st and 2nd Defendants that the above said appliction filed by the 5th Defendant after lapse of period of 10 months. Moreover there is no prima facie case against 5th defendant in the main suit as such he prolong the proceedings. Hence the above application liable to be dismissed.

The learned counsel for the plaintiff contended that the petition filed by the petitioner to set aside the exparte order is not maintainable since it is not carry any merits.

By considering the overall facts and the circumstances of this case and by perusing the records this court finds that before going to the merit of the application it is just and necessary to extract a law namely Order 9 Rule 7 of Code of Civil Procedure hereunder,

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.- Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

In the light of the above said provision it is crystal clear that under Order 9 Rule 7 CPC the court can permit the petitioners to participate in the proceedings from the date they appear. Therefore there is No hard and fast rule can be laid down. In this case the petitioner pleaded that the summon was affixed in his premises while he was in out of station. Therefore this court construe that summons to the D5 not duly served. Hence the reason assigned by the 5th defendant in his petition sustainable. In such cases an order awarding costs to the plaintiff would meet the ends of justice. Hence this court is inclined to allow the above petition with cost.

In the result, This petition will be allowed on payment of costs of Rs.3,000/- to the respondents on or before 13.08.2025. Reporting compliance on 14.08.2025.

Dictated to the steno-typist, directly typed by her in the computer, corrected and pronounced by me in open court, on this the 24th day of July, 2025.

Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioner: Nil
Witness and Exhibits on the side of the Respondents: Nil

Additional District Judge,
Virudhunagar.