

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, VIRUDHUNAGAR

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

Thursday, the 29th day of July, 2025

I.A.No.03/2024
in
OS.No.179/2024

Selvarani ... Petitioner/Defendant

Vs

Dileepkumar Bakmar
through its Manager
G.Subburam ... Respondent/Plaintiff

This petition came up before me on 23.07.2025 for final hearing in the presence of Thiru.S.Ramesh, learned advocate for the petitioner and Thiru.C.Haribalakrishnan, learned advocate for the Respondent 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 CPC by the Petitioner/Defendant to set aside the exparte order dated 21.10.2024 passed against her.

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

The Petitioner states that he is a defendant in Original Suit. The respondent filed the main suit against him and seeking an order of recovery of money regarding payment of Rs. 22,25,400/- along with interest to the plaintiff as a recovery for the loan of Rs. 11,00,000/- obtained by the defendant on 01.10.2019, which was made by

the defendant in a financial settlement, with interest of 6% on the principal amount of Rs. 11,00,000/- from the date of filing.

In this situation, there was an opportunity to file a written statement in the suit on 21.10.2024. Due to diarrhea, he was unable to appear in court or inform his advocate on 21.10.2024. A ex-party order was issued against him for not appearing in person on that day. 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 21.10.2024.

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

The defendant has filed this petition along with a written statement seeking set aside the exparte order passed against him on 21.10.2024 in the original case. It is unacceptable that the petitioner/respondent in the above petition could not have informed his advocate that he was unable to appear in court on 21.10.2024 due to diarrhea. The reason given by the petitioner/respondent is unacceptable at this stage. Furthermore, the petitioner, who was unable to inform the advocate due to diarrhea, sought information through the others with him. The information can be provided. Furthermore, the fact that the petitioner/respondent has filed this petition without any supporting documents is not legally tenable. Therefore, the petition should be dismissed with costs to the Respondent/Plaintiff.

4) **Point for consideration:**

Whether this petition is to be allowed or not?

5) **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 a contention of the defendant that the plaintiff filed this suit for recovery of money against her. While the above suit in O.S.No.179/2024 posted for filing of written statement on behalf of her on 21.10.2024, she was unable to intimate the date of hearing to her lawyer due to diarrhea. Hence she prayed before this court to allow the petition and her non appearance is neither wilful nor wanton.

On contrary to the above said submission the contention of the defendant that application filed by the defendant with false information. Hence the above application is not maintainable.

The learned counsel for the plaintiff contended that the petition filed by the petitioner to set aside the ex parte order is not maintainable since it does 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 defendnat to participate in the proceedings from the date they appear. Therefore there is No hard and fast rule can be laid down. Hence the reason assigned by the defendant in this petition is 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 respondent on or before 13.08.2025. Failing which this petition stands dismissed. 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 29th 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 Respondent: Nil

Additional District Judge,
Virudhunagar.