

In the Court of Subordinate Judge, Aruppukottai

**Present : Thiru. V. Ramalingam, B.Sc., B.L.,
Subordinate Judge, Aruppukottai.**

I.A.No.1/2022 in O.S.No.139/2021

Wednesday, the 21st Day of December 2022

Malaichamy ... Petitioner/Defendant

/ Vs/

Irulayee Ammal ... Respondent/Plaintiff

This Application came up for final hearing before me on 07.12.2022 in the presence of Thiru. B. Thirupathi, Advocate for the Petitioner/Defendant and Thiru. P. Rajendran Advocate for the Respondent/Plaintiff and upon hearing the arguments on both side and upon perusing the records, having stood over till this date for my consideration, this Court passed the following

ORDER

1. This Application is filed by the Petitioner/Defendant Under Order 9 Rule 7 CPC and Section 151 CPC to set aside the exparte order passed against the Petitioner/Defendant on 06.07.2022.

2. Brief averments of Petition : -

On 06.07.2022, the case was posted for filing of Written Statement by the Petitioner. Due to Diabates and Blood Pressure, the Petitioner was not able to file written Statement on 06.07.2022. Hence, exparte order was passed against the Petitioner/Defendant. The non-filing of written statement on 06.07.2022 is not wantonly and willfully. Hence, the exparte order passed against the Petitioner/Defendant is to be set aside and the Petition is to be allowed.

3. Brief averments of Counter of Respondent:-

The reasons stated in the Petition are false and it is for the Defendant to prove the same. To delay the case proceedings, the Petitioner did not file Written Statement and left the case to exparte. Hence, this Petition is to be dismissed with the cost of Respondent.

4. Point for consideration in this Application is whether this Petition is to be allowed or not?

5. **Point:-**

Heard both sides. Perused available records.

6. Both side arguments, records carefully taken into consideration. Eventhough, the Respondent has vehemently opposed this application, the Respondent has not stated any valid reason to dismiss this application and has not stated as what kind of prejudice would cause if at all this application is allowed. Hence, this court feels that a fair opportunity will be given to the petitioner, since this is court of first instance and hence to putforth both side case before this court to decide the suit on merit, this court grants opportunity to the petitioner.

7. In the result, this petition is allowed. No cost.

Dictated to the Stenographer directly and typed by her in the computer and after correction, this Order is pronounced by me in the Open Court this the 21st day of December 2022.

Subordinate Judge,
Aruppukottai.

Witnesses examined on the side of the Petitioner, Respondent: - Nil

Documents marked on the side of the Petitioner, Respondent:- Nil

Subordinate Judge,
Aruppukottai.

Sub Court, Aruppukottai
I.A.No.1/2022 in O.S.No.139/2021
Order dated: 21.12.2022