

In the court of the Additional Sub Court, Thanjavur
Present: Thiru. **M.Nagappan, B.Sc., L.L.M., M.B.A.,**
Additional Sub Judge, Thanjavur
Friday this the 20th day of December 2024

I.A.No: 04 of 2024 in O.S. No: 84 of 2022

Muruganantham

... Petitioner / 4th defendant

-Versus-

Pushpalatha

... Respondent/Plaintiff

This petition is heard in the presence of Mr. P.V. Kamaraj, the Advocate for the Petitioner/4th defendant, Mr. K. Mohana Sundaram, the Advocate for the Respondent/Plaintiff, Enquiry heard on both sides and having stood over for consideration till this day. This court delivered the following,

Order

The Petitioner filed this petition under Order 9 Rule 7 of CPC of set aside the order passed by this court on 05.08.2024 in O.S. No: 84 of 2022.

1. Brief facts in the petition as follows

The Petitioner/ 4th defendant claimed that due to jaundice he couldn't able to meet his counsel to prepare written statement and therefore the 4th defendant was set exparte on 05.08.2024 for non-filing of written statement within time. Hence, the petitioner filed this petition to setaside the exparte order passed against him on 05.08.2024, and by this court for the above reasons she sought for allow this petition.

2. Brief facts of Counter averments as follows

The respondent/Plaintiff in her counter stated that she denied all the averments in the petition save those are specifically admitted by her. The plaintiff contended that the reason assigned by the petitioner is not acceptable one and the petitioner has not filed any documents to show that the petitioner is suffered from Jaundice. Therefore, this petition is not sustainable and subject to be dismissed with cost.

3. Point for determination is Whether this petition should be allowed or not?

4. The learned counsel for the Petitioner/ 4th Defendant argued that this petition may be allowed and this petition will not prejudice the other side.

5. The learned counsel for the Respondent/plaintiff argued that this petition not filed with proper reasons, this petition filed with intention to drag on the case. Hence, she prayed for dismissal of this petition.

6. Heard both sides and records perused. The petitioner filed this petition set aside order passed by this court on 05.08.2024 for non-filing of written statement within time. On perusal of case records it shows that trial is yet to be commenced. In this situation, Though the petitioner does not produced any documentary evidences to prove her version, on considering that she should have an opportunity establish her defense and in the interest of justice and fairness this court comes of the view that this petition should be allowed. At the same time, when look into the opportunities given to the petitioner, this court comes of the considered opinion that this petition is allowed with cost the interest of justice and fairness.

7. In result, this petition allowed with cost of Rs.500/- to the respondent, the petitioner is hereby directed to pay the cost directly to the respondent and to file memo to that effect before this court on or before 10.01.2025. In default, this petition subject to be dismissed without further adjudication.

Dictated to the Steno Typist, recorded by her in computer, and then pronounced by me in open Court, after making correction by this court, on this the 20th day of December 2024.

Additional Sub Judge.
Thanjavur

Both side witness and documents: Nil

Additional Sub Judge.
Thanjavur