



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER PRONOUNCED ON : 06 / 01 / 2026

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

N.Malligarjunan ... Petitioner / Petitioner /
4th Defendant

Smt. Saraswathi ... Respondent / Respondent /
Plaintiff

For Petitioner : Mr.G.Ethirajulu

For Respondent : Mr.R.Kannan

<https://www.mhc.tn.gov.in/judis>



Feeling aggrieved by the Dismissal Order dated January 7, 2020 passed by the 'learned District Munsif, Udumalpet' ['Trial Court' for convenience] in I.A.No.625 of 2019 in O.S.No.96 of 2011, the Petitioner therein has preferred this Civil Revision Petition under Article 227 of the Constitution of India, 1950.

2. The Revision Petitioner herein is the fourth Defendant and the Respondent herein is the Plaintiff in the said Original Suit in O.S.No.96 of 2011. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. The Plaintiff filed the Original Suit seeking partition and permanent injunction against the Defendants. When the case was posted on November 21, 2016 for filing written statement, the fourth Defendant did not file written statement. Hence, he was set *ex-parte*. Then the fourth Defendant filed an Interlocutory Application in I.A.No.625 of 2019 under Order IX Rule 7 of Code of Civil Procedure Code, 1908 stating that he was bed-ridden due to high blood pressure and hence, he could not meet his Counsel and give instruction to file written statement.



4. The Plaintiff as Respondent in the Interlocutory Application

filed a counter stating that the fourth defendant only with a view to delay the proceedings, did not file written statement despite the sufficient opportunities given.

5. The Trial Court, after hearing both sides, dismissed the Interlocutory Application stating that after receiving summons on November 21, 2016 for the Original Suit, the fourth Defendant failed to appear before this Court and hence, he was set *ex-parte*. The Petitioner did not annex or file any medical records to show that he was suffering from high blood pressure during the material time. Accordingly, the Trial Court dismissed the Interlocutory Application.

6. Mr.G.Ethirajulu, learned Counsel for the Revision Petitioner/ Petitioner / fourth Defendant, reiterating the averments made in the affidavit filed in support of the Civil Revision Petition, would submit that trial has not yet commenced in the Original Suit. In these circumstances, the Trial Court ought to have considered the Order IX Rule 7 Application in a lenient manner in favour of the fourth Defendant. On the other hand, the Trial Court has approached the



Application in a hyper-technical manner and dismissed the

Application on technical grounds, which is not the right approach.

Accordingly, the learned Counsel would pray to allow the Civil Revision Petition, set aside the Dismissal Order passed by the Trial Court and allow the same.

7. Per contra, Mr.R.Kannan, learned Counsel for the Respondent / Respondent / Plaintiff would contend that the petitioner did not adduce any evidence to show that he was suffering from high blood pressure during the material time period. The Interlocutory Application has been filed two years after he was placed *ex-parte*, only with a view to prolong the proceedings, cause delay and ultimately, bend and harass the Plaintiff. The Trial Court only upon considering all these factors rightly dismissed the Application. Accordingly, he prayed to dismiss the Civil Revision Petition and sustain the Order of the Trial Court.

8. This Court has considered the submissions made on either side. Perused the materials available on record.



9. Admittedly, in this case, though the Suit was posted for trial, actual trial is yet to commence. In these circumstances, the Trial Court ought to have taken a lenient approach and allowed the Application under Order IX Rule 7 of CPC and set aside the *ex-parte* Order. There is no limitation period for setting aside an Order placing a party *ex-parte*. Hence, this Court is inclined to allow this Civil Revision Petition and set aside the Dismissal Order passed by the Trial Court.

10. In fine, the Civil Revision Petition is allowed. The Dismissal Order dated January 7, 2020 passed in I.A.No.625 of 2019 in O.S.No.96 of 2011 by the Trial Court is set aside and I.A.No.625 of 2019 is allowed. The Revision Petitioner / fourth Defendant is at liberty to file his written statement within thirty (30) days from today, if not already filed along with the Order IX Rule 7 Application. Considering the facts and circumstances, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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(2/2)

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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To

The District Munsif
Udumalpet.



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R. SAKTHIVEL, J.

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