



UPLOADED ON 19.09.2026

IN THE COURT OF PRINCIPAL COMMERCIAL COURT,
EGMORE, CHENNAI

Present: Thiru. S.GANAPATHISAMY, B.A.B.L.,
Principal Judge

Dated this 19th day of September 2026, Saturday

IA.No.1 of 2026 in C.O.S.No. 97 of 2026

Mr Nalainthran Karthik Vignesh,
Proprietor,
M/s.Vams Enterprises,
No.50/18, Namaiah Maistry Street,
New Washermenpet,
Tondiarpet,
Chennai – 600 081.

...Petitioner / Defendant

- Versus -

Mr.C.S.V.Sudhakar,
Proprietor,
M/s.Vasavi India,
No.122, Varadhamuthaippan Street,
Chennai – 600 001.

.... Respondent / Plaintiff

This Petition coming on this day for hearing on 02.09.2026 before me in the presence of M/s.N.Ravishankar Vallatharasu and T.B.Chandrapal, learned counsels for Petitioner / Defendant; of M/s.D. Kanagasundaram and R.Ananth, learned counsels for the Respondent/ Plaintiff and upon hearing the arguments of both sides and having stood over for consideration till this day, this court today delivers the following:

ORDER

1. The Petitioner/Defendant has come forward with this application under Order XXXVII Rule 4 read with Section 151 of Code of Civil Procedure to set aside the ex parte decree dated 18.04.2026 passed in the main suit with the following averments:-

The Summon in the main suit was received at residence of defendant during the period when the defendant was preoccupied with multiple personal and business commitments and summon was kept along with other office and house old records to take appropriate steps. Due to heavy work load and continuous business engagements, the defendant could not attend the papers immediately and it got mixed up with other documents at his residence. Thereafter, the defendant was diagnosed with jaundice and as he secured treatment, he could not appear before Court. After improvement of his health, when he verified his records, he came to know that he was set ex parte in the

suit. Due to his health conditions, he could not instruct his counsel to attend the suit proceedings. Thereafter, the Court remained closed for summer vacation.

2. The Respondent /Plaintiff has resisted this application with the following averments:-

An application under Order IX Rule 13 is not maintainable to set aside ex parte decree in Summary Suit. This application is also barred by limitation. Unless special circumstances are established, this application with vague and generic reasons and false reason of jaundice without medical certificate is not maintainable. The defendant has pursued diligently the other legal proceedings. The plaintiff had initiated cheque dishonour proceedings in S.T.C No.23 of 2024 against the defendant. The defendant was convicted on 20.04.2026 in the above criminal case and he was present before the Court. He filed an appeal in C.A.No.687 of 2026 and obtained order of suspension of sentence subject to deposit of 15% of compensation amount. The defendant actively participated in the criminal proceedings at the same time. Ignoring summons in the suit is only to avoid his liability. The defendant has admitted his liability through his email dated 12.06.2023. The defendant has not raised any triable issues and he has filed this application only to drag on the proceedings.

3. The point for consideration in this application is whether petitioner has established special circumstances to set aside ex parte decree?

Both side heard.

4. The learned counsel for the plaintiff submitted that the defendant during relevant period filed an appeal as against his conviction and got order of suspension of sentence on 20.05.2026 in the Vacation Court and he appeared before the Magistrate Court on 20.04.2026 on the date of judgment. The learned counsel for the plaintiff has cited two decisions reported in Manu /TN/3900/2009 in Roy Augustine Akkara Vs Sha Dipchand Dalaji and Others and 2026: MHC:840 in R.Ettiraj Vs P. Kubendiran and others for the proposition that there is a distinction between Order IX Rule 13 and Order XXXVII Rule 4 and unless special circumstances are established with specific substantial defence in the main suit, the defendant cannot maintain an application to set aside ex parte decree.

5. The learned counsel for the defendant submitted that for filing Criminal Appeal, the presence of Appellant, namely defendant is not at all required. The learned counsel for the defendant has forgotten a fact that even in Civil Suit posted for first appearance or in subsequent proceedings, the presence of parties is not at all required. In this case, Summon was duly served on the defendant on 13.03.2026 and the case was posted for his appearance on 02.04.2026. As the defendant failed to appear before this Court, he was set ex parte and ex parte decree came to be passed on 18.04.2026.

6. The learned counsel for the plaintiff has produced case status of S.T.C No. 23 of 2024 and sentence suspension order in Criminal Appeal for perusal of this Court. The case status would show the presence of defendant before the Magistrate Court on 20.04.2026 and he was convicted under Section 138 of Negotiable Instruments Act and he preferred an appeal and sentence was alone suspended on 20.05.2026. As correctly pointed out by the learned counsel for the plaintiff, the defendant has failed to produce medical records to sustain his contention of ailment of jaundice. The defendant was able to pursue the criminal proceedings diligently by giving proper instructions to his counsel. At the same time, even after receipt of summons and being aware of this suit proceedings, he did not appear before this Court either in person or through his counsel. Therefore, the story of mixing of summons with other papers is a casual story being taken in court proceedings.

7. In the judgment reported in Manu/TN/3900/2009, our Hon'ble High Court having followed of our Hon'ble Supreme Court judgment reported in 2003 (5) SCC 315 has held that unless substantial defence is disclosed, application under Order XXXVII Rule 4 to set aside the ex parte decree is not at all maintainable. In this Application, the defendant has not disclosed his substantial defence. In another afore mentioned citation relied on by the learned counsel for the plaintiff, our Hon'ble High Court has distinguished Order IX

Rule 13 from Order XXXVII Rule 4. Therefore, the defendant was aware of this suit proceedings and he has wantonly failed to appear before this Court. The reason for non appearance is not sufficient. This application is devoid of merits and liable to be dismissed. Accordingly point is decided.

In the result, this application is dismissed with cost.

Dictated by me to the Steno-Typist, transcribed and typed by him in the computer, corrected and pronounced by me in the open court, this 19th day of September 2026.

GANAPATHI
SAMY

Digitally
signed by
GANAPATHI
SAMY
Date:
2026.09.19
17:07:21
+0530

Principal Judge
Principal Commercial Court
Egmore, Chennai.

Draft/ Fair Order in

I.A.No.1 of 2026

in

C.O.S.No. 97 /2026

Date:19.09.2026

Principal Commercial Court,
Egmore, Chennai.

