

APPELLATE CIVIL.

Before Mr. Justice Devadoss.

PATTANNA *alias* PATTABIRAMA AYYANGAR (SECOND
DEFENDANT), PETITIONER,

1927,
October 31.

v.

NELI CHETTI, RAMIAH CHETTI AND ANOTHER
(PLAINTIFFS), RESPONDENTS.*

*Civil Procedure Code (Act V of 1908), O. IX, rr. 6, 7 and 13—
Ex parte decree, setting aside of—Written statement filed
by defendant—Defendant declared ex parte—Subsequent
application by defendant to set aside order and to be allowed
to defend suit.*

When a defendant once filed a written statement and then absented himself and was in consequence declared *ex parte*, if he afterwards appears while the suit is pending and wants to fight the suit, he should be allowed to come in at the stage at which the suit was, and should not be shut out altogether on the ground that he was once declared *ex parte*.

Venkatasubbiah v. Lakshminarasimham, (1925) 49 M.L.J., 273, followed.

PETITION under section 115, Civil Procedure Code, and section 107 of the Government of India Act, to revise the order of the Court of the District Munsif of Tiruvallur in I.A. No. 618 of 1926 in Original Suit No. 482 of 1924.

The material facts appear from the judgment.

K. S. Desikan for petitioner.

M. Patanjali Sastri for respondent.

JUDGMENT.

This is an application to revise the order of the District Munsif of Tiruvallur refusing to set aside the

* Civil Revision Petition No. 1105 of 1926.

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order declaring the second defendant *ex parte* in a pending suit. The second defendant appeared and filed a written statement and afterwards did not appear and he was declared *ex parte*. Considerable time afterwards he appeared and wanted the *ex parte* order to be set aside. The District Munsif refused to set aside the order making him *ex parte* as it was passed so far back as 22nd August 1925. When a person once files a written statement and then absents himself and in consequence is made *ex parte*, if he afterwards appears and wants to fight the suit, he should be allowed to come in at the stage at which the suit is. He should not be shut out altogether on the ground that he was once placed *ex parte*. This point was decided by my brother WALLACE, so far back as 27th July 1925. The case is reported in *Venkatasubbiah v. Lakshminarasimham*(1). It does not appear that this case was brought to the notice of the District Munsif. I think the proper order would be to allow this revision petition and set aside the order of the District Munsif and direct the petitioner to pay the respondents' costs. No orders necessary on the stay petition.

K.R.

(1) (1925) 49 M.L.J., 273.
