

**IN THE COURT OF THE SUBORDINATE JUDGE,
KOTTARAKKARA**

Present:- Sri. Shanavas. A, Civil Judge (Senior Division)
On Thursday the 20th day of November, 2025/29th day of Karthika, 1947.

Restoration Petition 13/2025

in
OS 4/2023

Between

Petitioner/Plaintiff :-

Gireesh Kumar, S/o. Vamadevan, Chaprayil Veedu,
Maranadu P.O, PIN -691505, Chittakodu Muri,
Ezhukone Village, Kottarakkara Taluk.

By Adv:Sri. S. Chandrasenan.

And

Respondent/Defendant :-

Pramod, aged 54 years, S/o. Divakaran,
Kalanguvila Veedu, Vendar P.O, Kottathala Muri,
Neduvathoor Village, Kottarakkara Taluk.

By Adv:Sri. N.R. Roy.

This petition is filed U/S.151, O.9 and R.4 of the CPC, 1908 is coming on for final hearing before me on 12.11.2025 and having stood over for consideration to this day, the court passed the following:

ORDER

This is an order in a petition filed under Order IX Rule 4 of the Code of Civil Procedure, 1908 to restore the suit on file.

2. The petitioner's case in brief is as follows:- The petitioner is the plaintiff in this case. The suit is included in the additional list of 15/07/2025. However the petitioner could not appear before this court as he was under treatment at Lekshmi Medical Trust Hospital, Ezhukone from 05/07/2025 to 09/07/2025. He was advised for 48 days complete rest and advised not to travel. Therefore the petitioner could not appear before this court on 15/07/2025. For that he filed a petition before the court and sought for deferment of the evidence. However this court was inclined to dismiss the petition and dismissed the suit for default. The petitioner had remitted huge amount as court fee and he is ready to adduce evidence. The medical certificate also produced here with to show that the petitioner was not deliberately absent from the court. So the petitioner sought for restoring the suit on file and sought for a meritorious disposal as per law.

3. The respondent filed objection contenting interalia as follows:- The petition is not maintainable either in law or on facts. This case of the year 2023 and it was posted for the evidence of the plaintiff. On that day the plaintiff filed an application to remove the case from the list. The application was dismissed holding that no

sufficient reason is pleaded in the affidavit filed by the plaintiff in support of the application. Now the averments in the petition show that he was prevented from appearing before the court as he was admitted in the hospital. As per the averment he was admitted in hospital from 05/07/2025 to 09/07/2025. The case was actually posted to 15/07/2025. No documents produced to show that the petitioner was under the treatment. There is no chance in allowing the case in favour of the plaintiff. The intention of the plaintiff is to pressurise the deferment to concede with the demands of the plaintiff. The petitioner has approached the court with the unclean hand . Hence the respondent sought to dismiss the petition.

4. Heard both sides.

5. The following points arose for consideration:-

1. Whether the petitioner has sufficient cause in setting aside the dismissal order and restore the suit on file?
2. What shall be the order and costs?

6. **Point No.1:-** The petitioner being the plaintiff sought for setting aside the dismissal order and restore the suit on file claiming that the petitioner was under treatment and he was advised to take rest for 48 days. So that he could not appear before the court and gave evidence. Consequently the court dismissed the suit. According to the petitioner it was not the wilful latches or default on the side of the

petitioner as he was under treatment he could not appear before the court and gave evidence. According to him he remitted a huge amount as court fee. So a meritorious disposal according to him as warranted. On the other hand the respondent clearly pleaded and argued that there was no sufficient cause stated by the petitioner to set aside the dismissal order of the suit. It was stated that a medical certificate was produced. However no such certificate was seen in the case records. This being a money suit and the petitioner being the plaintiff is bound to be present and adduce evidence as per law. As the suit was listed much earlier the petitioner has sufficient time for preparation and for adducing evidence. If the petitioner was ill, he can adduce evidence through power of attorney. That was also not done by petitioner consequently it was dismissed. It is trite that in the restoration petition, the court should extend liberal approach for a meritorious disposal as per law. Considering that the petitioner paid huge amount of court fee and the fact that the meritorious disposal is warranted after adducing evidence on either side would meet the ends of justice. Nonetheless, the difficulties meted out by the respondent have to be addressed. The difficulties faced by the respondent are needs to be compensated. Hence the reason projected by the petitioner could be considered as sufficient cause to set aside the dismissal order. Hence point No.1 is found in favour of the petitioner.

7. **Point No.2:-** In view of my discussions and findings on the above point the petition is liable to be allowed.

In the result, the petition stands allowed. The order of dismissal in OS 4/2023 dated 17/07/2025 stands set aside and suit restored file on payment of costs of ₹ 2,500/- to respondent .

For payment 25/11/2025.

Dictated to the confidential assistant, typewritten by her, corrected and pronounced in open court on this 20th day of November 2025.

Sd/-

SHANAVAS. A
Civil Judge (Senior Division)

Appendix:- Nil.

Sd/-

Civil Judge (Senior Division).

Typed by : Binu.S
Compd.by: Shinu.