

IN THE COURT OF THE SUB JUDGE, NEDUMANGAD**Present : Smt. Rajasree. C.R, Civil Judge (Senior Division)****On Wednesday 4th March 2026/ 13th Phalguna 1947****I.A 10/2025 in OS 31/2020****Petitioner/Plaintiff**

Sabari. B.R.Nath, S/o. Late K. Radhakrishnan Nair,
aged 20 years, residing at Bindhu Vihar,
Chenavilakom, Mankulam, Aloyadu P.O., Pin-
695607, Manikkal, Venjaramoodu,
Thiruvananthapuram.

(By Adv. Sri.S.Y. Mohankumar Kiran)**Counter Petitioners/
Defendants**

- 1 Remya. T, W/o. Late Radhakrishnan Nair. K,
residing at Bindhu Vihar, MP III/364 A,
Chenavilakom, Mankulam, Aliyadu. P.O., Pin-
695607, Manikkal, Venjaramoodu,
Thiruvananthapuram.
2. Nakshthra (Minor), D/o. Remya. T, aged about 13
years, residing at Resmi Nivas, Vazhavila,
Mithirmala P.O., Thiruvananthapuram. Now
residing at Bindu Vihar, ChenaVilakam,
Mankulam, Aliyadu. P.O., Pin- 695607, represented

by her natural guardian and mother Remya. T, the 1st defendant.

3. Gomathi Amma (Died) , aged about 80 years,
Residing at Resmi Nivas, Vazhavila, Mithirmala
P.O., Thiruvananthapuram. Now residing at Bindu
Vihar, Chenavilakom, Mankulam, Aliyadu. P.O.,
Pin- 695607, Thiruvananthapuram.

(Correction carried out as per order in IA No. 1/26 in O.S 31/2020)

((By Adv. Sri.M. Nizarudeen)

This petition having been finally heard on 04/03/2026 and the court on the same day passed the following:-

ORDER

This application is filed under Order IX Rule 9 of the Code of Civil Procedure, 1908 and under Section 151 of the Code of Civil Procedure, 1908, to set aside the order of dismissal of the Interlocutory application 5/2023 dated 13.10.2025 and to restore the same to the files of this court.

2. Petition averments, in brief, are stated as follows:-The petitioner is the plaintiff in the suit. The petitioner had filed an Interlocutory Application as IA.5/2023 to institute the suit as an indigent person, being unable to remit the balance court fee. That IA was posted for the report from the District Collector.

Report was received only on 29.09.2025 and the petitioner has applied for a copy of the report. The matter was posted on 13.10.2025 for the enquiry of the petitioner as last chance. Though the date was informed to the petitioner by his counsel, unfortunately the petitioner could not appear before the court as he was bedridden due to fever and throat infection. Though an earnest request was made to adjourn the case for enquiry, the court was not inclined to allow the request and the application was dismissed for default on 13.10.2025. The absence of the petitioner was neither willful nor due to any negligence but due to genuine reasons. The petitioner has no sufficient means to pay the court fee. The petitioner is unemployed and has no independent income or means of livelihood. Petitioner depends on his close relatives for his livelihood. To meet the ends of justice, it is highly necessary to restore IA.5/2023 on the files of this court. Thus, this application is filed to set aside the order of dismissal of IA.5/2023 and to restore the same back to the files of this court.

3. First respondent opposed the application contending as follows:- The petition is not maintainable either in law or on facts and is not maintainable. The petitioner has no right to file an application to declare him as indigent person. He is the heir of the deceased Radhakrishnan Nair who was an employee of Thiruvithamcore Devaswom Board. The petitioner alone is entitled to get an amount of Rs.10,00,000/- as the benefits of his father. The petitioner is working in an institute at Thiruvananthapuram and is earning an

income of Rs.40,000/- per month. Radhakrishnan has got properties also. There is also a direction from the Hon'ble High Court to dispose of the case at the earliest. No document is produced to show that the petitioner was laid up on the date when IA 5/2023 was dismissed. This application is filed only to cause hardship and injury to this respondent. The petitioner is in possession of lakhs of rupees and also gold ornaments. He is also entitled to get the service benefits of his late father K.Radhakrishnan Nair. The first respondent is the wife of K.Radhakrishnan Nair and the only intention of the petitioner is to deny her the service benefits of the deceased. So, this application is filed only to prolong the matter. Though the first respondent obtained the job of a deceased husband, she is not able to join the job due to the pendency of this litigation. The only intention of the petitioner is to prolong the case. Thus, this application is to be dismissed with costs.

4. Heard both sides.

5. Points that arose for consideration are:

1. Did the petitioner show any good cause for his absence on the date when IA.5/2023 was dismissed for default?
2. Is this application allowable?
3. What is the order as to costs?

6. Point no.1 and 2 :- To avoid repetition and for brevity, these points are considered together. The specific case put forth by the petitioner/plaintiff is that he was unable to appear before the court on 13.10.2025 when IA.5/2023 was posted for enquiry. According to the petitioner, as he was laid up, he could not appear before the court and there is no willful latches on or omission on his part. On the contrary, the first respondent contended that the only intention of the petitioner is to drag on the matter.

7. IA.10/2025 was originally filed by the petitioner against the first respondent. In the objection, it was specifically stated that the petition is not maintainable as all the parties to the litigation are not made parties to this application. Thereafter, IA.1/2026 was filed by the petitioner to correct the cause title and that application was allowed and the cause title was corrected. So, the objection raised by the respondent that the petition is not maintainable based on the cause title is not sustainable.

8. Throughout the objection the first respondent has contended that the only intention of the petitioner is to prolong the matter and to cause hardship to her. She has even contended that the petitioner is having sufficient means to remit the court fee. On the contrary, the petitioner averred that he is unemployed and is meeting his livelihood with the assistance of his near relatives. According to him, he has no income to remit the balance court fee

and has filed an application as IA.5/2023 under Order XXXIII Rule 1 . It is evident from the proceedings that on 29.9.2025 this Court has recorded in the proceedings that the report from the District Collector was received in IA.5/2023 and thereafter the matter was posted for enquiry of the petitioner . This court has specifically stated that last opportunity was given to the petitioner for adducing evidence. On 13.10.2025, when the matter was taken up, the petitioner was not present and no application was filed seeking an adjournment. So, this court was not inclined to allow the application and IA.5/2023 was dismissed for default. The affidavit filed by the petitioner would clearly go to show that even though his lawyer had contacted him and had informed him regarding the fact that IA.5/2023 was posted for adducing evidence, he could not appear before the court as he was laid up due to fever and throat infection. It is true that no medical record has been produced by the petitioner to show that on 13.10.2025 he was laid up due to fever and throat infection. However, there is nothing brought out that would go to show that the only intention of the petitioner is to drag the matter.

9. It is true that IA.5/2023 an application to declare the petitioner as indigent was preferred in the year 2023. However, the report from the District Collector was received only in the month of September, 2023. on 29.09.2025, after receiving the report from the District Collector, the case was posted to 13.10.2025 for recording the evidence of the petitioner. True

that the petitioner was not present on that date. However, considering the fact that the affidavit the petitioner has shown good cause for his non appearance on the date when the petition was posted for enquiry and considering the prayer in IA.5/2023, to permit the petitioner to sue as indigent person, I am of the view that an opportunity could be given to the petitioner to contest the case.

10. The sections quoted in this application are section 151 of the Code of Civil Procedure and under Order IX Rule 9 of the Code of Civil Procedure. Order IX Rule 9 is not applicable to the facts of this case. This is a case where an interlocutory application was dismissed for default. Order IX Rule 9 is applicable only when the suit was dismissed for default in whole or in part under Order IX Rule 8 of the Code. Misquoting of section is not a reason to disallow the prayer sought for. Though Order IX Rule 9 is not applicable in this case, section 151 can be invoked in this case and the interlocutory application that was dismissed for default can be restored on the files of this court invoking section 151 of the Code of Civil Procedure, 1908. In the light of these aforesaid discussions and to meet the ends of justice, I am inclined to allow this application. Thus, these points are found in favour of the petitioner.

11. Point no. 3. As the order has been passed in an interlocutory application, no costs is imposed for allowing the application.

In the result, this application is allowed. The order dismissing IA.5/2023 for default on 13.10.2025 is set aside and is restored on the files of this suit and is posted for the enquiry of the petitioner .

(Dictated to the confidential assistant, typed by her, corrected by me and pronounced in Open Court on this, the 4th day of March, 2026).

RAJASREE.C.R,
Civil Judge (Senior Division)

Appendix: NIL

Civil Judge, Senior Division

Typed by :BR

Compd by :RPN