

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

Present : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Wednesday the 11<sup>th</sup> day of September 2024

**I.A.No.11/2024**

**in**

**IA.No/10/2024**

**in**

**O.S.No.1003/2017**

A.Krishnasamy

...Petitioner/Petitioner/Plaintiff

/VS/

1. P.Palanisamy

2. P.Eswaran

3. P.Manisankar

4. Ponnarasi

...Respondents/Respondents/Defendants

This petition coming on 03.09.2024 for final hearing before me in the presence of Thiru.V.Raveendran, Advocate for the Petitioner and of Thiru.K.Shanmuganathan, Advocate for the Respondents and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

**ORDER**

This petition is filed by the petitioner under order 9 rule 9 and section 151 of CPC to restore the petition in IA.No.10/2024.

**1. The brief averments of the petition/affidavit filed by the petitioner as follows:**

1.1. The petitioner/plaintiff have filed the main suit for permanent injunction against the respondents/defendants. The application in IA.No.10/2024 for amend the plaint and posted on 23.07.2024 for filing of notice of hearing and counter statement.

1.2. The petitioner/plaintiff was laid-up with fever and jaundice. He was

taking Siddha Treatment and taking complete rest from 15.07.2024 till this date. Due to his ill health, the petitioner/plaintiff was not able to contact his counsel and not able to appear before this court on 23.07.2024. Hence, this hon'ble court was dismissed for default the application on 23.07.2024. The non filing of the notice of hearing is not due to negligence and wanton. It is only because the said bonafide reasons. Hence, this petition.

**2. The brief averments of Counter statement filed by the 1<sup>st</sup> Respondent and adopted by 2<sup>nd</sup> to 4<sup>th</sup> Respondents as follows:**

2.1. The petition is false, frivolous, vexatious and unsustainable in law and on facts. The IA.No.10/2024 for amend itself not maintainable in the eye of law. By knowing the same the petitioner with a view to drag the proceedings of the case, he filed that amendment application to amend the main prayer after lapse of 6 years from the date of the plaint filed by petitioner/plaintiff.

2.2. The petitioner did not produce any document to prove that he was taking medical treatment for Siddha Treatment for fever and jaundice, which enlightens the real facts that the petitioner filed this present application with false and frivolous averments.

2.3. Allowing this petition to restore the amendment application in IA.No.10/2024 which pave way to the petitioner to amend the fundamental structure of the suit and the same will not be maintainable. The petitioner filed this petition to restore the dismissal order dated 23.07.2024 is nothing but to drag the case with a view to obtain a unlawful gain. Hence, the petition ought to be dismissed.

**3. Points for Consideration:-**

Whether the petition under order 9 rule 9 and section 151 of CPC to restore the petition in IA.No.10/2024 is to be allowed?

**4. Points:-**

4.1. Heard both sides. Perused the records. On perusal of records the main suit

is filed by the petitioner/plaintiff for the relief of permanent injunction against the respondents/defendants. The petitioner/plaintiff filed petition in IA.No.10/2024 to amend the plaint in respect of prayer and details of valuation. The said IA.No.10/2024 was posted on 23.07.2024 for notice of hearing and counter on that day no representation for petitioner. Hence, the said IA.No.10/2024 was dismissed for default on that day. The petitioner/plaintiff filed this petition on 05.08.2024 to restore the IA.No.10/2024.

4.2. The main suit is for permanent injunction, it must be concluded on merits by adducing both side oral and documentary evidences. Hence in the interest of justice to determine the issue between plaintiff and defendant finally on merits there has been a chance must be given to contest the case to both side. Hence in the interest of justice this petition will be allowed if the delay should be compensated by way of cost.

***In the result this petition is to be allowed on payment of cost of Rs.500/- to be paid to the respondents/defendants on or before 18.09.2024 on failure this petition stands dismissed automatically. For compliance Call on 22.02.2024.***

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 11<sup>th</sup> day of September 2024.

Sd/N.Renuga

District Munsif,  
Sulur.

**List of witnesses and documents on petitioner side:-**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

Sd/N.Renuga

District Munsif,  
Sulur.

18.09.2024

This petition is coming again on this day for final hearing before me in the presence of Thiru.V.Raveendran, Advocate for the Petitioner and of Thiru.K.Shanmuganathan, Advocate for the Respondents and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Cost paid memo recorded. This petition is allowed.

Pronounced by me in open court this the 18<sup>th</sup> day of September 2024.

Sd/N.Renuga

District Munsif,

Sulur.

Draft/ Fair Order

I.A.No.11/2024 in

IA.No.10/2024

O.S.No.1003/2017

Dated:18.09.2024

DMC, Sulur