

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

**Present: Mr. T.GANESH B.A., B.L.,
Subordinate Judge,
Madurantakam**

Wednesday, the 08th day of October, 2025

I.A. 2/2024

in

O.S No. 134/2018

(CNR.No.TNCG13-000504-2018)

O. Dhanasekaran

...Petitioner/Plaintiff

..Vs..

1. D. Logabhi Raman

2. Manikandan

...Respondents/Defendants

This petition coming up for final hearing on 15.09.2025 in the presence of Mr.R.E.Charles, counsel for petitioner/plaintiff and Mr.R.Prabakar, counsel for the respondents 1 and 2 and after hearing the arguments on both sides, upon perusing the case records and having stood over for the consideration of this court till date, this court delivered the following.

ORDER

This petition is filed by the Petitioner/plaintiff under Order IX Rule 9 of Civil Procedure Code to restore the suit which is dismissed for default on 01.12.2021.

2. Averments of the petitioner:

Petitioner is the plaintiff in the above case. Petitioner had filed a suit for recovery of money. The case was posted for cross examination of plaintiff side witness (Pw1) on 01.12.2021. Petitioner village was cut off from other road due to heavy rain. There was no electricity in his village for two days. Petitioner could not

contact his counsel and unable to attend this court on particular date. Petitioner was not able to appear to mark documents. Hence the petitioner files this application to restore the suit which is dismissed for default on 01.12.2021.

3. Memo of Counter filed by respondents 1 and 2 in brief :

The respondent counsel denies the allegations set out in the affidavit. The petition to condone the delay of 136 days is not maintainable at law and facts. The bundle was mixed up with other Bundles and was not able to trace it out it's older false. The petition not filed under Section 5 of limitation Act. The petition filed only drag the case. Hence the petition is liable to be dismissed with cost.

4. No oral or documentary evidence adduced by both parties.

5. Heard both sides. Perused the records carefully.

6. Point:

Whether this application can be allowed or not?

This petition is filed under Order IX Rule 9 of the Code of Civil Procedure by the petitioner/plaintiff seeking restoration of the suit which was dismissed for default on 01.12.2021.

The petitioner contends that the suit was posted for cross-examination of P.W.1 on 01.12.2021. Due to continuous heavy rainfall, his village was isolated from the main roads and was without electricity for two days, which rendered him unable to communicate with his counsel or appear before the Court on the said date. Consequently, he could not present himself for the marking of documents, and the suit came to be dismissed for default. The petitioner therefore prays for restoration of the suit, stating that the non-appearance was neither deliberate nor wanton but caused by circumstances beyond his control.

The respondents, in their counter, deny the petitioner's averments and contend that the application is not maintainable in law or on facts. It is argued that there is an unexplained delay of 136 days in filing the restoration petition, which has not been

properly accounted for under Section 5 of the Limitation Act. According to the respondents, the reasons assigned are false and are intended only to prolong the litigation. Hence, they seek dismissal of the petition with costs.

This Court has carefully considered the rival contentions and perused the records. The admitted position is that the suit was dismissed for default on 01.12.2021 when neither the petitioner nor his counsel appeared. The explanation offered by the petitioner is that heavy rains disrupted transportation and power supply, preventing his appearance. While no independent proof such as official weather reports or affidavits from local authorities has been filed to substantiate the same, the reason advanced appears plausible considering the nature of the stated circumstances.

The object of Order IX Rule 9 CPC is to ensure that a party is not denied an opportunity to prosecute his case on technical grounds, provided sufficient cause is shown for non-appearance. The Court must strike a balance between procedural discipline and the overarching principle of doing substantial justice.

Though the respondents have raised a contention regarding delay, admittedly there is no delay and that the application was filed in time. The dismissal of a suit for default affects substantive rights, and restoration may be allowed when absence is satisfactorily explained and not willful. In the present case, the circumstances pleaded, coupled with the petitioner's expressed readiness to proceed with the trial, persuade this Court to accept that the default was not intentional. Accordingly, in the interest of justice, this Court is inclined to allow the petition for restoration of the suit dismissed for default on 01.12.2021, subject to suitable terms to compensate the respondents for the inconvenience caused. Hence this point is decided accordingly.

7. Result:

In fine this application is allowed on conditions that,

i) the petitioner shall pay a sum of Rs. 1000.00 (Rupees One Thousand) only to the respondent on or before 17.10.2025 and

ii) the petitioner shall ready with his documents and mark the same on 22.10.2025. Call 22.10.2025

Dictated by me to the Steno-Typist, typed by him in the computer directly, corrected and pronounced by me in the open court, this the 08th day of October 2025.

Subordinate Judge,
Madurantakam

Both sides Evidence and Exhibits :

Nil

Subordinate Judge,
Madurantakam

FAIR/DRAFT ORDER
I.A No. 2/2024
IN
O.S No. 134/2018
D.O.D: 08.10.2025
SUB JUDGE,
MADURANTAKAM