

TNVP010019602024



In the Court of the Principal District Judge, Villupuram

Present : Thiru.A. Manimozhi, B.A., LL.B.,
Principal District Judge, Villupuram.

Monday, the 3rd day of August 2026

I.A. No.2/2025

in
A.S. No.30/2024

...

Sargunarajan

...Petitioner/
Appellant/
Defendant

/Vs/

Gandhi

... Respondent /
Respondent
Plaintiff

This Petition is coming on 10.06.2026 before me for final hearing in
the presence of Tr.K.Sankar, Advocate for the Petitioner; and of

I.A.2/2025 in A.S.No.30/2024 Prl. District Court, Villupuram, Dated 03.08.2026

Tr.T.Prabakaran, Advocate for the Respondent; and having heard the arguments of both side counsels; and on perusing the records and having stood over for consideration till this day, this court passed the following...

ORDER

The Petitioner/Appellant/Defendant filed this petition under Order XLI Rule 19 read with Section 151 of the Code of Civil Procedure, to restore the appeal, which was dismissed for default on 10.06.2025.

2) a) The case of the Petitioners is that the Petitioner filed the above Appeal as against the Judgment and decree passed by the Principal Subordinate Court, Villupuram in O.S.No.395/2013. The said appeal was posted for arguments. His counsel had instructed him to meet in person to get some clarifications. But, unfortunately the Petitioner could not meet his counsel, as he was suffering with high fever for about one week prior to the said date. The Petitioner is a chronic diabetic patient. There was no one to inform about his ill health to his counsel. He was continuously taking treatment and therefore, he could not meet his counsel. Hence, there was no representation on 10.06.2025 when the Appeal was called, and so the Appeal was dismissed for default. The Petitioner is having fair chance of success in the Appeal. There was no wilful default on his part. The Petitioner would be put to undue hardship if the Appeal is not restored.

Hence, the petition.

3) a) The Respondent/ Respondent/Plaintiff filed a counter statement denying the averments made in the petition. The case of the Respondent is that, he is the Plaintiff in the above suit and the decree was passed in his favour after a full trial. He is a senior citizen aged about 77 years and is suffering from age related ailments. Despite repeated opportunities and adjournments granted at the Petitioner's request, he failed to appear and prosecute the appeal deliberately, leading to its dismissal on 10.06.2025.

b) The present petition has been filed with false averments only with an intention to prolong the litigation. The Appeal was posted for arguments on 07.12.2024, 03.01.2025, 22.01.2025, 27.1.2025, 07.02.2025, 12.02.2025, 26.03.2025, 07.04.2025, 29.04.2025 and 10.06.2025. The Respondent was ready to advance arguments and had also filed written arguments. The Appellant has been granted multiple adjournments at his requests, yet he consistently failed to appear or take the matter seriously. The Petitioner has caused harassment to the Respondent by the undue delay. The reason of high fever and chronic diabetic ailments stated by the Petitioner are wholly false. No medical record has been produced by the Petitioner. The Appeal itself completely devoid of merits. No sufficient

cause, much less any reasonable cause, has been made out for restoration of the Appeal. If the Appeal is restored, it will cause serious prejudice and hardship to the Respondent. Hence, this petition is liable to be dismissed with exemplary cost.

4) No witness was examined and no document was marked on either side in the enquiry.

5) Heard arguments on both sides and perused the records.

6) **The points for consideration are :-**

1. Whether the Petitioner has shown sufficient cause for his absence?

2. Whether the Appeal has to be restored and this petition has to be allowed?

SUBMISSION ON BOTH SIDE:

7) a) The learned counsel for the Petitioner by reiterating the reason stated in the petition, has submitted that the petition has been filed in time and that the Petitioner has to be given one more opportunity to prosecute the appeal in the interest of justice and that the Petition has to be allowed.

b) Per contra, the learned counsel for the Respondent contended that the original suit was filed by the Respondent for recovery of loan amount due on promissory note in the year 2013, and the Petitioner has successfully dragged on the suit for more than 10 years. In the above

appeal, there was no representation for the Appellant from 07.04.2025 to 10.06.2025. Written arguments was filed by the Respondent in the Appeal. The Respondent filed execution petition and an order for attachment was passed and only then the Petitioner had chosen to file the above Appeal. After filing this petition, the Petitioner has changed his counsel. However, change of counsel cannot be a reason to allow this petition. As such, the learned counsel for the Respondent prayed to dismiss the petition.

8) Answer to the Point Nos. 1 & 2:-

DISCUSSIONS

a) The perusal of the records shows that the Respondent filed the original suit on the basis of the promissory note dated 25.11.2010 executed by the Petitioner in favour of the Respondent for a loan of Rs.4,50,000/- The suit was filed in the year 2013. The Petitioner (Defendant) was duly served. But, he remained absent and set exparte. He subsequently filed petition under Order IX Rule 7 of the Code of Civil Procedure, and the same was allowed on 01.04.2015 and thereafter the matter was posted for filing written statement. But, he did not file the written statement even after grant of sufficient opportunities and he was again called absent and set exparte. Again he filed an application under Order IX Rule 7 of CPC., and the same was allowed on 10.10.2015. He filed written statement.

After framing issues, the suit was posted for trial on 05.09.2015, on which date the Plaintiff was examined as PW1. Then trial proceeded. The Plaintiff's side evidence was closed on 12.01.2016. The Defendant examined as DW1. When the matter was pending for further witness on the side of the Defendant, he filed an application under Section 45 of Indian Evidence Act, and also another application under Order VIII Rule 3 of CPC., and ultimately the said applications were closed on 02.01.2020, as the report of the expert was received. Then, the matter was adjourned for further witness on the Defendant side. The defendant was called absent for several hearings and so Defendant side evidence was closed and the matter was posted for arguments. At that stage, the Defendant filed an application seeking to reopen his side. In the meantime, due to the COVID-19 pandemic, the case was being adjourned and finally after hearing arguments the suit was decreed on 06.12.2023.

b) It is admitted that, on the basis of the decree, the Respondent filed an Execution Petition and in the said Execution Petition, attachment was also ordered. In the present Appeal, the records were received and the matter was posted for arguments from 14.11.2024 onwards. On several hearing dates, the appellant was called absent and there was no representation. Written arguments was filed on the Respondent side on

07.04.2025 . Thereafter, the appeal was adjourned to 29.04.2025 and 10.06.2025, on which date there was no representation and the Appellant was called absent.

c) The Petitioner has not produced any medical records to prove his alleged illness. Of-course, this petition has been filed in time. However, the above discussed chronology of the case clearly shows that the Petitioner has successfully dragged on the matter for several years. Therefore, the reasons stated by him appears to be neither sufficient nor convincing. However, it is a well settled principle of law that Courts shall lean towards deciding the matters on merits rather than shutting the doors of justice on technical grounds or procedural defaults. Considering the fact that the original suit pertains to the recovery of a loan amount, the interest of both parties must be balanced. While the Petitioner (Appellant) ought to be offered a fair opportunity to prosecute the appeal on merits, the Respondent/Decree holder (aged more than 70 years), cannot be left prejudice or indefinitely delay without adequate compensation for the delay and security for the decree amount.

d) For the foregoing reasons and discussions, this Court decides that, though the Petitioner has not shown sufficient cause for his absence, this petition has to be allowed to offer him a final opportunity to prosecute the

appeal on merits, subject to strict terms and conditions. The point Nos. 1 and 2 are answered accordingly.

RESULT :

In the result, this petition is allowed, and the dismissal order passed in A.S.No.30/2024 dated 10.06.2025 is set aside, subject to the following conditions:

i) The petitioner shall deposit a sum of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only) to the credit of the suit before the Trial Court within a period of four weeks from the date of this order and produce proof of such deposit before this Court.

ii) The Petitioner shall pay a sum of Rs.15,000/- (Rupees fifteen thousand only) towards cost to the Respondent within the same period of four weeks and to produce the memo.

iii) It is made clear that, if the Petitioner is failed to comply with either of the above conditions within the stipulated time, this petition shall stand dismissed automatically.

iv) **Call on 31.08.2026** for reporting compliance with the above conditions.

Order dictated by me to the Stenographer, transcribed by her in the Computer, corrected and pronounced by me, in the open court, this the

3rd day of August 2026.

**Principal District Judge,
Villupuram.**

List of witness examined and document
marked on the side of the Petitioner / Defendant :-

- Nil -

List of witness examined and document
marked on the side of the Respondent / Plaintiff :-

- Nil -

sd/A.M
**P.D.J,
VPM.**

**Draft / Fair Order :
I.A.No.2/2025 in
A.S.No.30/2024
Dated: 03.08.2026**