

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,
I Additional District Munsif, Nagercoil.

Wednesday, on the 16th day of October, 2024.

I.A. No. 5 of 2024

in

O.S. No. 168 of 2021

1. Jacob Edwin

... Petitioner/1st Defendant

-VS -

1. Yesu Nesam

... 1st Respondent/ Plaintiff

2. The District Collector,
Kanyakumari District.

3. The Block Development Officer,
Agasteeswaram Union,
Kanyakumari District.

... 2nd, 3rd Respondents/Defendants

This Petition came before this Court on 04.10.2024. Mr. M. Nelson Babu, Learned Counsel for the Petitioner and Mr. Sivathanu Malayan Pillai, Learned Counsel for 1st Respondent. Mr. C.Johnson Government Pleader for 2nd and 3rd Respondents. Upon perusing the case records and having stood over till date for Consideration, this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order XVIII Rule 17 and Section 151 of CPC seeking an order to recall PW1 for cross examination.

2. The Petitioner had stated that the case was posted on 13.08.2024 for PW1 cross examination. The Petitioner underwent surgery on 22.07.2024 in Dr.Scott's Piles Fistula Centre, Ananthannadarkudy and was under post operative treatment on 13.08.2024. Hence, he could not give instruction, to his Counsel for cross examination of PW1. Hence PW1 could not be cross examined on that day and the cross examination was closed. Unless PW1 is recalled for cross examination, the Petitioner will be put to great loss and injury. Hence the above Petition.

3. The 1st Respondent had filed counter, stating that the Petitioner has to prove the reason stated by him, in the above Petition. The above Petition has been filed only to drag on the suit proceedings. Hence the 1st Respondent prayed for dismissal of the above Petition. The 2nd and 3rd Respondents were set exparte.

4. The point for consideration is Whether the above Petition has to be allowed or not ?

5. During the course of enquiry, the Petitioner had marked Ex. P1 Medical Certificate dated 05.08.2024 issued by Dr.Scott's Piles Fistula Centre, certifying that the Petitioner underwent Laser Fistulectomy Primary Closure for Anterior Fistula on 22.07.2024 and he is in post-operative treatment follow up. Ex. P1 Certificate is dated 05.08.2024, from where, it is seen that the Petitioner underwent surgery on 22.07.2024. On perusal of the suit docket, it could be seen that PW1 was examined in chief on 28.06.2024 and the case was posted for PW1 cross examination on 08.07.2024, 16.07.2024, 05.08.2024, 09.08.2024 and 13.08.2024. On all these hearings, the Petitioner/PW1 was absent. There was no representation on his side.

Though the Petitioner had established that he had underwent operation on 22.07.2024 and he was in post-operative treatment as on 05.08.2024. The reason for no representation, on his behalf through his Counsel on all those hearings, is not explained, in the affidavit. Considering the same this Court is of the considered view that the above Petition could be allowed on terms.

In the result the above Petition is allowed on condition the Petitioner pays a sum of Rs.500/- (Rupees Five Hundred Only) to the 1st Respondent on or before 23.10.2024 call on 24.10.2024.

Dictated to the Steno-Typist, transcribed and typed by her in the Computer, corrected and pronounced by me, in Open Court this, the 16th day of October, 2024.

Sd/-

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses & documents : Nil.

Respondent side witnesses & documents : Nil.

Sd/-

I Additional District Munsif,
Nagercoil.

*I ADMCourt, Nagercoil.
Draft/Fair Order in
I.A.No.5/2024 in
O.S.No.168/2021
Date:16.10.2024*