

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Thursday, on the 12th day of June, 2025.

I.A. No.5 of 2025 in O.S. No.140 of 2023

CNR No.TNKK04-000258-2023

1. Bala Murugan

2. Prabha Fernando

... Petitioners / Plaintiffs

-Vs-

Kanyakumari Town Panchayat
rep. by its Executive Officer.

... Respondent / Defendant

This petition came before this court on 11.06.2025 for a final hearing in the presence of Mr. M. Timitilal, Learned Counsel for the Petitioners / Plaintiffs and in the presence of Mr. A. Gnana Sekar, Learned Counsel for the Respondent / Defendant and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioners have filed the above petition under Section 5 of Limitation Act and Section 151 of the Code of Civil Procedure, seeking an order to condone the delay of 02 days in filing Petition for restoring the suit which was dismissed for default on 30.08.2024.

Gist of Averments in the Petitioners Petition :

2. The Petitioner is the 1st Plaintiff in the suit. The 2nd plaintiff is running travels along with petitioner. The petitioner was filing this petition for petitioner and on behalf of 2nd plaintiff. The above suit was posted for plaintiff side evidence on 30.08.2024. The petitioner have not appeared on that date before this court, this court has the suit for dismissed default. The petitioner was conducting this suit responsibly. Since, petitioner was unwell, petitioner could not met petitioner's Advocate for past one month and could not inform anything about this suit status to the 2nd plaintiff. For the above said reason, and 2nd plaintiff could not appear before this court for giving evidence, this is neither wilful nor wanton. It is necessary to give evidence and documents on behalf of plaintiff side to disclose the true nature in order to get an order from this court. Hence, it is necessary that this court to restore the dismissed order on 30.08.2024, If not, petitioner/plaintiff side will be into great irreparable loss. Hence, this court humbly restore the above, said, dismissed for default order on 30.08.2024.

Gist of Averments in the Respondent /Defendant Counter:

3. The Respondent / Defendant had filed counter stating that the petition is not maintainable in law and on facts. It is humbly submitted that, the petitioner has not produced any documentary evidence to prove the contentions

of delay. However, continuously the petitioner has filed the instant petition in order to drag on the proceedings in the above case. Further petitioner has not stated any reason for delay. This petition lacks bonafide. The petition is devoid of merits. The petitioner did not come before this court with clean hands. Hence to accept the counter and dismissed the petition.

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

5. Point:

Heard both sides. Records perused. This suit is for the Permanent injunction. The petitioner is the 1st plaintiff filing this petition for him and on behalf of 2nd plaintiff. The petitioner stated that this court has dismissed the suit for default on 30.08.2024 for non-appearance of plaintiff, when the suit was posted for plaintiff side evidence. The reason stated by the petitioner for non-appearance is due to illness, could not met their advocate, could not give information about the status of the suit to the 2nd plaintiff and hence both of the plaintiffs could not appear before this court on the hearing date. Even though there were no medical documents in support of the above said reasons produced by the petitioner. This court in the interest of justice considers to condone the delay as it was only two days delay and allowing this petition would cause no prejudice to the defendant side. In the view of above facts, this court is inclined

to allow this petition on conditional cost.

As a result,

This petition is allowed, on the condition that the Petitioners shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 20.06.2025. otherwise, this petition would be dismissed. Call on 20.06.2025.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 12th day of June, 2025.

II Additional District Munsif
Nagercoil.

List of witness and documents for Petitioners side : Nil

List of witness and documents for Respondent side : Nil

II Additional District Munsif
Nagercoil.

*II ADM, Nagercoil.
Draft/Fair Order
I.A.No.5/2025 in
O.S.No.140/2023
Date: 12.06.2025.*