

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,
II Additional District Munsif, Nagercoil.

Friday, on the 30th day of January, 2026

I.A. No.9 of 2025 in O.S. No.74 of 2021

CNR No.TNKK04-000097-2021

N. Subramanian

... Petitioner/Plaintiff

-vs-

Thanumoorthy

... Respondent / Defendant

This petition came up before me on 27.01.2026 for a final hearing in the presence of Thiru. A. Jegan Lall, Advocate for the Petitioner / Plaintiff and in the presence of A. Sundar, Advocate for the Respondent / Defendant and upon hearing both sides and upon perusing the case records and having stood over for consideration till this day, this court delivers the following:

ORDER

The petitioner has filed the above petition under Order IX Rule 9 and Section 151 of the Code of Civil Procedure, seeking to pass an order restore the suit and dismissed for default against the suit in O.S.No.74/2021 on 28.10.2025 and to restore the suit.

2. Gist of Averments in the Petitioner / Plaintiff Petition :

The Petitioner is the plaintiff in the suit. The petitioner has filed this petition for restoration of the O.S.No.74 of 2021. Since, petitioner was unable to testify in court due to petitioner's health condition, petitioner have written a general power of attorney to petitioner's wife to conduct the case on petitioner behalf. Accordingly, the accept the power petition was filed in the court and the petition was returned on 16.10.2025, the details are unknown.

3. This case, was posted on 28.10.2025 and since petitioner was not present on that day, the above case was dismissed for default. Since at the time petitioner was admitted in hospital and hence petitioner was not able to contact petitioner's advocate and also not able to appear before this court for reason stated above and so petitioner was called absent and the suit was dismissed for default on 28.10.2025.

4. The petitioner can meet petitioner's advocate only on 30.10.2025 and came to know about the dismissal and default of the suit. Hence, petitioner filed the restore petition immediately without delay. The petitioner was sure that petitioner have a good case and the case will be decided in petitioner favour. Hence the O.S.No.74 of 2021 dismissed for default on 28.10.2025 ought to be restored and taken into the file of this court, otherwise petitioner will be put to irreparable loss and injury and petitioner rights will be seriously prejudiced.

Hence, this petition is to be allowed.

5. **Gist of Averments in the Respondent / Plaintiff's Counter:**

Save those that are specifically admitted hereunder and rest of the averments are hereby denied as false. From 15.04.2024 onwards the case stands posted for plaintiff side evidence, even after sufficient time given by this court, the plaintiff had not come forward to lead evidence before this court. Even after getting adjournment for 18 months the plaintiff had not come forward to lead evidence, so only this court dismiss the suit. The plaintiff had not produced any medical certificate before this court to prove his pleading with regard to illness. Since the petitioner / plaintiff lead a healthy life he is unable to produce any medical certificate before this court. Further the petitioner/plaintiff had wantonly not appeared before this court on 28.10.2025.

6. Regarding the averments in paragraph 6 of the petition it is submitted, since the petitioner/plaintiff had voluntarily not appeared before this court on 28.10.2025, the petition for restore the case is not maintainable. The petition is not maintainable in law and also on facts. The petition deserves no merit in it and lacking in bonafides. The petitioner had not approached this court with clean hands. Hence, to accept the counter and dismissed the petition.

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

8. Point:

Heard both sides. Records perused. The petitioner is the plaintiff in the suit filed for Permanent injunction and other reliefs. The suit has been dismissed for default on 28.10.2025 for non-appearance of plaintiff, when the suit was posted for trial. The reason stated that, petitioner was admitted in hospital and hence petitioner was not able to contact petitioner's advocate and also not able to appear before this court on 28.10.2025. Subsequently, the petitioner stated that petitioner could meet petitioner's advocate only on 30.10.2025 and came to know about the dismissal and default of the suit.

9. The respondent contention is that even after adjournment for 18 months the plaintiff had not come forward to lead evidence, so only this court dismiss the suit. The plaintiff had not produced any medical certificate before this court to prove his pleading with regard to illness.

10. Even though no documents were filed to substantiate the above reason and despite the contention of the respondent, only with a view to giving one more fair opportunity to the petitioner / plaintiff and deciding the case on merit and in the interest of justice, this court is inclined to allow this petition with conditional cost.

As a result,

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and

Conciliation Centre, Kanniyakumari at Nagercoil on or before 03.02.2026.
otherwise, this petition would be dismissed. Call on 03.02.2026.

Dictated to the Steno-Typist, and typed by her directly in the Computer,
corrected and pronounced by me, in open court this, the 30th day of January
2026.

II Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents -: Nil.
Respondents side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No.9/2025 in
O.S.No.74/2021
Date: 30.01.2026.
II ADM Court, Nagercoil.