

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT
KANCHIPURAM

PRESENT: Tmt. Fanny Rajan.B.A., B.L.,(Hons)
Principal District Munsif, Kanchipuram

Thursday, the 17th day of July 2025

I.A 4 of 2025

and

I.A 5 of 2025

in

O.S.No. 253/2019

Lakshmi

...Petitioner/ defendant

/Versus/

Prabakaran

.... Respondent/ Plaintiff

This Petition has come up on 07.07.2025 for final hearing before me in the presence of M/s.E.L. Kannan, E. Kalidoss, A. Dinesh counsels for the Petitioner and M/s. P. Rajamanikkam G. Bharani, C. Kaviarasan counsels for the defendant, upon hearing the argument and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following orders:

COMMON ORDER

1. **IA No.4 of 2025:** The petitioner filed this petition under section 151 of CPC to reopen the case which was closed on 16.11.2024 and post matter for cross examination of PW1 and thus render justice

2. **IA No.5 of 2025:** The petitioner filed this petition under order 18 Rule 17 to recall the cross examination of PW1 which was closed on 16.11.2024 and thus render justice.

Concise statement of the averments in the affidavit filed by the Petitioners in I.A No. 4 and 5 of 2025:

3. The petitioner has averred that on 16.11.2024, the case was posted for cross examination of PW1 and as his counsel was engaged in another court, he was unable to cross examine PW1. The non appearance is neither will full nor wanton. He has valid ground of defense and hence, the PW1 has to be recalled for cross examination. Hence this petitions.

Concise statement of the averments in the counter affidavit filed by the Respondent in I. A No. 4 and 5 of 2025:

4. The respondent has denied the averments and averred that the cross examination of PW1 was posted on 04.03.2024, 18.03.2024 and 15.04.2024. After PW1 cross examination in part on 15.04.2024, for cross continuation the

case was adjourned on 07.06.2024, 20.06.2024, 23.07.2024, 02.07.2024, 05.08.2024, 19.08.2024, 03.09.2024, 12.09.2024, 16.10.2024 and as cross examination no further adjournment was granted on 16.11.2024, 05.12.2024. On 06.12.2024 posted for PWs and since was closed. Thereafter posted for DWs on 06.01.2025 and on 09.01.2025, upon adjournment petition allowed. From 17.02.2025 adjourned to 13.03.2025 for DWs evidence as no further adjournment. On 18.03.2025, this petition was filed and posted for counter. Though the respondent is living in Chennai with his son, he is regularly appearing. Hence, the petitions are liable to be dismissed.

POINT FOR CONSIDERATION:

5. **IA NO.4 OF 2025:** Whether the petition to re-open the has to be allowed or not?

6. **IA NO.5 OF 2025:** Whether the petition to re-call has to be allowed or not?

DISCUSSION AND FINDINGS:

7. This Court considers the submissions of both the counsels and perused the materials on record. No ocular or documentary evidence has been let in by the Petitioners and Respondents.

8. On perusal of the records, it is found that the Plaintiff evidence was commenced on 14.09.2023 and the chief was closed on 20.02.2024. Thereafter, the case was posted for PW1 cross on 04.03.2024, 18.02.2024, 15.04.2024, 07.06.2024, 20.06.2024, 03.07.2024, 22.07.2024, 05.08.2024, 19.08.2024, 03.09.2024, 12.09.2024, 16.10.2024 and closed on 06.11.2024. It is noted that the PW1 was cross examined in part on 18.03.2024. The PW1 was present on all the days and was ready to subject himself to cross. Whereas, after closure of the PW1 evidence, the plaintiff evidence was closed on 16.12.2024. The case was posted for defendant evidence on 06.01.2025, 09.01.2025, 17.02.2025. When this petition was filed on 13.03.2025.

9. In the instant case, the Learned Counsel for the Petitioner have specifically contended that on 16.11.2024, his counsel was held up in another case and hence unable to cross examine the PW1 completely on 16.11.2024. Per contra the learned counsel for the Respondent contends that the PW1 was continuously present and already has been cross examined in Part. Hence, sufficient opportunity already granted and no reason to reopen and recall.

10. This court is of the considered view that the reason stated though vague and not reasonable, the Hon'ble Apex Court and the Hon'ble Madras High Court in

plethora of cases held that as long as no malafide or abuse of process is explicitly shown, the Courts may take a liberal approach in condoning the reasons for delay and provide an opportunity to the parties to contest their case on merits. In view of the above stated, this Court may adopt a liberal approach in the case of the Petitioners and examines if there is any deliberate negligence or delay in filing the document.

11. This court has considered the arguments of the Learned Counsel for the Respondent alleging that this Petition is filed to delay the proceedings. It is pertinent to note that despite the contention of dragging the proceedings, the said contention appears as a formal defense without any substantive facts except date of adjournment or evidence to establish the intention of dragging. It is true that the PW1 was not cross examined and there is a delay in filing this petition. However, the mere filing of the Petition at the hand with delay alone is not clearly sufficient to hold that the Petitioner deliberately, intentionally and malafide delayed filing this Petition. Hence, the contention of the Learned Counsel for the Respondent on this behalf cannot be entertained, in the absence of an evident malafide intention through due evidence.

12. This Court considers that though the reasoning stated by the Petitioner that

regarding non availability of the counsel is without any specific particulars regarding the efforts taken. As per the well established principle of law, the parties shall not suffer for the fault of the counsels and always endeavour shall be made to dispose cases on merits.

13. Upon perusal of the Petitioner's Affidavit and other material records, this Court finds that there is no apparent or deliberate intentional prolonging on the side of the Petitioner or any attempt by the Petitioner to abuse the process of law. Therefore, this Court considers it necessary to adopt a liberal approach as per the well established principle of law in respect of the vague reasoning by the Petitioners and this Court is inclined to reopen and recall the PW1 evidence for subjecting himself to cross examination by the petitioner herein.

14. Though this court finds that though PW1 can be reopened and recalled for cross examination, it is appropriate to consider if there is any inconvenience caused to the Respondent due to the filing of the instant petitions. This Court upon perusal of the records, notices that the instant Petition has been filed at the stage of defendant evidence and the PW1 was present and always ready for subjecting himself to cross continuation.

15. This Court takes judicial note of the law laid down by the Hon'ble Supreme Court in *N. Balakrishnan v. M.Krishnamurthy [1998 (7) SCC 123]* that “*It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.*” From the above stated this court finds that an apparent inconvenience has been caused to the PW1, due to the instant Petitions when the case is posted at the stage of defendant evidence. Considering the said fact, this court concludes that it is reasonable to order a sum of Rs.2500/- to be paid by the petitioners to the PW1 for the inconvenience caused in I.A.No.4, 5/2025 each and be ready to cross examine on the date of appearance of PW1.

RESULT:

16. **I.A NO.4 OF 2025:** In the result, this Petition is allowed and PW1 evidence is reopened for the limited purpose of cross examination of PW1, on the condition that the Petitioner shall pay a sum of **Rs.2500/- (Rupees Two Thousand Five Hundred only)** to the PW1 on or before 24.07.2025 and be ready for cross examination on the day of appearance of PW1 and co-operate in the proceedings. Call on 24.07.2025.

17. **IA NO.5 OF 2025**: In the result, this Petition is allowed and PW1 is recalled for the limited purpose of cross examination of PW1, on the condition that the Petitioner shall pay a sum of **Rs.2500/- (Rupees Two Thousand Five Hundred only)** to the PW1 on or before 24.07.2025 and be ready for cross examination on the day of appearance of PW1 and co-operate in the proceedings. Call on 24.07.2025.

Dictated to the Steno - Typist, who directly typed the same in her Computer, corrected and pronounced by me in open court, this the 17th July 2025.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM

Petitioner and defendant side witness and document : NIL

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM