

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.

Present : Thiru. M.P. Ramkishore, B.E., BL., (Hon's)

District Munisf, Vadipatti

Dated this the 04th day of August 2025

CNR No.TNMD190001342022

IA. No.03/2025

in

IA. No.392 / 2022

In

O.S. No.92 /2022

1. Indrani,
W/o. Late. A. Megavarnam
2. Kalaiarasi,
D/o. Late. A. Megavarnam

---- *Petitioners / Petitioners / Plaintiffs*

//Versus//

1. A. Ramayya,
S/o. Athiyakonar
2. A. Nagarathinam,
S/o. Athiyakonar
3. N. Aathishesan,
S/o. Nagarathinam
4. N. Balakrishnan,
S/o. Nagarathinam

---- *Respondents / Respondents / Defendants*

This petition was filed before this Court on 06.01.2025 coming before me for final hearing on 04.08.2025, Advocate Thiru. A. Mathan appeared for Petitioners / Plaintiffs, Advocate Thiru. K. Selvam appeared for R2, R4 / D2, D4. R1 and R3 remains ex-parte in main suit. Upon hearing the arguments advanced by both the sides' counsel and upon perusing the available material records, today this Court has delivered the following....

ORDER

1. The petitioner had filed this petition under Order IX Rule 9 of CPC to set aside the order dated 06.11.2024 and to restore the petition in IA. No.329/2022.

2. **Petitioner averments in brief:**

The relevant portion of the petition was that the petitioners were the petitioners in IA. No.329/2022 in OS. No.92/2022. The said petition was filed for temporary injunction. The petition contention was that the IA. No.329/2022 was posted for enquiry on 06.11.2024. The petitioners due to the illness of 2nd petitioner, were not able to met with their counsel and to appear before this Hon'ble Court on the said date. Hence the petition was dismissed for default, due to non appearance of the petitioners on 06.11.2024. Thus the petitioner filed this petition to set aside the order dated 06.11.2024 and to restore the petition in IA. No.329/2022 in OS. No.92/2022.

2. **Counter averments of R2 and R4 in brief:**

The brief case of the counter affidavit of R2 and R4 was that, these respondents were the respondents 2 and 4 in the petition in IA No.329/2022 in O.S. No.92/2022 and contended that this petition was filed to restore the petition in IA No.329/2022 in O.S. No.492/2008 by setting aside the order passed on 06.11.2024 by this Hon'ble Court. The reason stated by the petitioners was not sufficient to file this petition and no evidence was filed to prove their claim. Thus this petition was filed only to drag on the proceedings. Hence this petition is liable to be dismissed.

3. Both sides' did not let in any evidence on their side.

4. **THE POINT FOR CONSIDERATION IS THAT:** Whether the petition is liable to be allowed or not?

i. Heard both sides and records perused. The petitioners had filed this petition to set aside the order dated 06.11.2024 and to restore the petition in IA No.329/2022 in OS. No.92/2022, as the petition was dismissed for default due to non appearance of this petitioners. On the other hand, the respondent deny the petition averments and stated that this petition was filed only to prolong the proceedings.

ii. Both sides' did not file any documents in this proceedings.

iii. Order 9 rule 9 (1) : Where a suit is wholly or partly dismissed under rule 8 the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

iv. As this petition is for setting aside the dismissal order passed by this court on 06.11.2024 and to restore the suit in IA No.329/2022 in OS. No.92/2022, the burden is on the petitioners to prove their case. To prove their claim, the petitioners had pleaded that the petitioners was prevented by sufficient cause from appearing before this court on 06.11.2024, as the 2nd petitioner was suffered by illness, was not able to meet with their counsel and to appear before this Court on the said date.

v. On the other hand, the respondents deny the petitioner's contention and pleaded that the petitioners cannot claim the relief sought for by them in this petition as there was no documents was filed to prove as the 2nd petitioner was suffered by illness. Admittedly no documents was filed by the petitioners to show their bonafide in filing this petition. However, on considering the reason stated by the petitioners in their affidavit, for not appearing before this court on 06.11.2024, seems to be convincing. Further the petitioners filed this petition within limitation as per law. Considering both side contentions, it is clear that the no hardship and irreparable loss would be caused to the contesting respondents if this petition is allowed. Hence, this court is inclined to allow this petition with cost of Rs.500/-.

5. In the result, this petition is allowed on cost of Rs.500/-. Cost to be paid to the contesting respondents on or before next hearing of the main suit.

Directly dictated to the Stenographer and computerized, error checked and pronounced in the open court on 04th day of August 2025.

District Munsif,
Vadipatti.

Petitioners side evidence and documents: Nil

Respondents side evidence and documents: Nil

District Munsif,
Vadipatti.

DISTRICT MUNSIF COURT

Vadipatti

Fair Order/~~Draft Order~~

IA. No.03/2025

In

IA. No.392/2022

In

O.S. No.92/2022

Date : 04.08.2025