

IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM

Present: **Thiru. L.PRAKASH, B.Sc., B.L.,**
DISTRICT MUNSIF, UDHAGAMANDALAM.

Saturday, the 06th day of December 2025

I.A. No. 01 of 2025
in
O.S. No. 108 of 2023
(C.N.R. No. TNNS030 - 00138 - 2023)

Ruckmani

... Petitioner/Plaintiff

/VS/

N. Sundharan

... Respondent/Defendant

This petition came on 03.11.2025 for final hearing before me in the presence of Mr. M. Munirathinam, learned Counsel for the Petitioner/Plaintiff and of Mr. K. Anandakrishnan, learned Counsel for the Respondent/Defendant, upon hearing both side, and upon considering case records carefully, this court passes the following

ORDER

1. This petition is filed Under Order IX Rule 9 of the Code of Civil Procedure, praying to restore the main suit O.S. No. 108 of 2023 which was dismissed on 24.07.2025 for default.

Gist of Petition and affidavit:

2. The brief averment of petition is that, the petitioner is the plaintiff in the above suit, and when the suit was posted for trial on 24.07.2026, due to heavy rain the petitioner could not appear before this court in time and come to the court with two hours late, the petitioner was called absent, leading to the main suit was

dismissed for default on 24.07.2025, later the respondent filed the another suit against the petitioner relating to the same subject matter, in which the petitioner filed a set aside petition, which is also pending and posted on 29.07.2025, the petitioner having a good case as against the respondent. The reason for non-appearance on 24.07.2025 is neither willful nor deliberate, but only due to the above said reason, unless the court restores the dismissal order of the main suit O.S. No. 108 of 2023, the petitioner would be prejudiced greatly, hence, prays to allow this petition.

Gist of Counter statement:

3. On the other hand, the Respondent in his counter statement denying the allegations in the petition and the affidavit submitted that, originally the above suit was posted for trial on 24.07.2025 and not on 24.07.2026 as mentioned in the affidavit, the petitioner/plaintiff wantonly and wilfully failed to appear in court and that the reason incessant rain in Ooty, given by the petitioner for not able to attend the court, is very flimsy and the same is denied by the respondent/defendant, as litigants commonly used to attend the court despite incessant rain. The suit is already pending and not related to the same subject matter of this suit and the petitions filed by the petitioner/plaintiff to restore the suit in I.A. No. 02 and 03 of 2025 in O.S. No. 12/2024 were already dismissed on 06.08.2025 for non-payment of cost.

4. The description of property in this suit and the suit filed by the respondent/defendant in O.S. No. 12/2024 are totally different and boundaries mentioned also wrong. The non appearance of the petitioner/plaintiff on 24.07.2025 is wilful and deliberate and with malafide intention to protract the proceedings and thereby harass the respondent/defendant. Therefore the petition is devoid of merit and truth and the same is not maintainable in law, hence they prays to dismiss the petition with cost.

Discussion:

5. Heard both side arguments, petition, counter statement and case records perused carefully. The point for determination in this petition is that, whether the petitioner has shown sufficient cause to restore the suit dismissed for default on 24.07.2025? and Whether the petition is liable to be allowed or not? This petition is filed under Order IX Rule 9 of the Code of Civil Procedure, praying to restore the main suit in O.S. No. 108 of 2023, which was dismissed for default on 24.07.2025. The reason stated by the petitioner for non appearance is due to heavy rain on that date the petitioner could not appear before this court in time. On the other hand the respondents deny that reason and submits that the reason is flimsy and not acceptable.

6. It is well settled that for restoration of a suit under Order IX Rule 9 CPC, the petitioner must establish that there was sufficient cause for his absence on the date of dismissal. In the present case, the suit was filed in the year 2023 seeking a relief of permanent injunction, and the same became ripe for trial as early as 05.07.2024. However, despite the suit being ready for trial, the plaintiff repeatedly failed to commence the trial. The notes paper order sheet reveals that on several dates i.e., 02.09.2024, 14.11.2024, 10.01.2025, and 27.03.2025 when the matter was posted for trial, there was no representation on the side of the plaintiff.

7. Further, when the suit was posted for trial on 10.07.2025 as a last chance, again the plaintiff was called absent and the counsel for the plaintiff was not present, while the counsel for the 1st defendant was present. Even then, this Court, in the interest of justice, granted one more opportunity and adjourned the suit for trial to 24.07.2025 specifically marking it as a last chance no further adjournment, with a specific direction to the plaintiff to appear and proceed with the case without fail.

8. However, on 24.07.2025 also, the plaintiff was called absent and neither the plaintiff nor his counsel appeared before the Court to commence the trial. This consistent pattern of non-appearance clearly indicates lack of diligence and interest on the part of the plaintiff in prosecuting the matter. In these circumstances, the suit came to be dismissed for non-appearance and non-prosecution.

9. The petitioner now attributes his absence on 24.07.2025 to heavy rain, stating that he arrived two hours late. The said explanation is disputed by the respondent, and except for the bare assertion in the affidavit, no material has been produced to substantiate the claim. The petitioner has also carelessly mentioned incorrect dates in the affidavit.

10. However, dismissal of a suit for default is a serious consequence, and the general principle is that matters should be decided on merits unless there is clear evidence of wilful negligence or abuse of process.

11. Though the conduct of the petitioner reflects repeated lapses, this Court considers that one final opportunity may be granted, subject to stringent terms, enabling the matter to be adjudicated on merits while at the same time compensating the respondent for the inconvenience caused. Hence, in the interest of justice, this court inclines to allow this petition with reasonable cost of Rs.1000/- (One Thousand only).

RESULT

12. In the result this petition will be allowed on payment of cost of Rs.1,000/- (One Thousand Only) to the respondent on or before 16.12.2025. Upon payment of cost, the dismissal order dated 24.07.2025 in O.S. No. 108 of 2023 shall stand set aside and the suit shall be restored to file. In default of payment of cost,

the petition shall stand dismissed automatically. For compliance of condition call on 16.12.2025.

This order is dictated to the steno - typist, typed by her in computer, corrected by me and pronounced by me in the open court on this 06th day of December 2025.

**District Munsif,
Udhagamandalam.**

Draft/Fair Order:

**I.A.No.01/2025
in
O.S. No. 108/2023**

Dated: **06.12.2025**

**District Munsif Court,
Udhagamandalam.**