



**IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM,
THE NILGIRIS**

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

Thursday, the 6th day of August 2026

I.A. No. 05 of 2026
in
O.S. No. 51 of 2025
(C.N.R. No. TNNS030 – 00088 - 2025)

S. Senthilkumar

...Petitioner/Plaintiff

/VS/

1. B. Kamala

2. Indira

3. Chandralekha

4. Kavitha

5. Rajkumar

... Respondents/ Defendants

This petition came on 06.08.2026 for final hearing before me in the presence of Mr. A. Mahesh, learned Counsel for the Petitioner/Plaintiff and of Tr. Ravikumar, learned Counsel for the Respondents/Defendants and upon considering case records carefully, this court passes the following

ORDER

1. This petition is filed under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure seeking to restore the suit and to permit the petitioner/plaintiff to proceed with the case.

**Gist of Petition and affidavit:**

2. The petitioner/plaintiff states that the suit was posted on 25.06.2026 for the cross-examination of the petitioner. However, due to sudden ill-health, the petitioner could not appear before the Court and was also unable to inform the learned counsel because of the unexpected medical condition. Owing to the absence of the petitioner on 25.06.2026, this Court dismissed the suit for default. It is the case of the petitioner that the non-appearance was neither wilful nor deliberate but was solely due to unforeseen illness and circumstances beyond his control. The petitioner further submits that he has been diligently prosecuting the suit with every intention to have the matter decided on merits and that there was no intention either to delay the proceedings or to show any disrespect to the Court. It is further stated that unless the order of dismissal dated 25.06.2026 passed in O.S. No. 51 of 2025 is set aside and the suit is restored to file, the petitioner would suffer irreparable loss and hardship. Hence, the present petition has been filed.

3. The learned counsel appearing for the respondents/defendants has made an endorsement of "No Counter" and submitted that the petition may be allowed subject to the imposition of costs.

Points for consideration:

4. Heard the learned counsel appearing for the petitioner and perused the entire records. The following point arises for consideration is ***"Whether the petitioner/plaintiff has shown sufficient cause for his non-appearance on 25.06.2026 and whether the suit dismissed for default is liable to be restored to file?"***

**Discussion:**

5. On a careful perusal of the records, it is seen that the suit was instituted on 03.06.2025 seeking the relief of permanent injunction. Issues were framed on 04.08.2025, and the suit became ripe for trial on 22.08.2025. However, despite the matter being ready for trial, the plaintiff did not commence the trial till 13.02.2026 on the ground of pendency of I.A. No. 03 of 2025 filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. After dismissal of the said interlocutory application on 13.02.2026, the suit was adjourned to 02.03.2026 with a specific direction that it was the last chance and that no further adjournment would be granted.

6. On 02.03.2026, the plaintiff was examined as P.W.1. Thereafter, the matter was repeatedly adjourned on 11.03.2026, 24.03.2026, 07.04.2026, 16.04.2026, 28.04.2026 and 03.06.2026 for continuation of the chief examination. Though the plaintiff appeared only on two occasions, even on those dates the chief examination was not completed. Ultimately, on 03.06.2026, the plaintiff was partly further examined in chief and the matter was adjourned to 11.06.2026 for continuation. On 11.06.2026, the learned counsel for the plaintiff submitted that there was no further chief examination, and accordingly the chief examination was closed. The suit was then posted for cross-examination of P.W.1 on 18.06.2026. On that day, the plaintiff remained absent and, at the request of the learned counsel, the matter was adjourned to 25.06.2026.

7. On 25.06.2026 also, the plaintiff did not appear and there was no representation on behalf of the plaintiff. Nevertheless, in the interest of justice, this Court passed over the matter till 5.30 p.m. Even thereafter, there was neither any representation nor appearance on behalf of the plaintiff. Consequently, the suit was



dismissed for default on account of the non-appearance of the plaintiff and for non-prosecution.

8. In the present petition, the petitioner has attributed the absence on 25.06.2026 to sudden ill-health. However, no medical records or other supporting materials have been produced to substantiate the said claim. Further, the affidavit does not explain the repeated absence and lack of diligence exhibited by the plaintiff on several earlier hearing dates during the course of trial. Thus, the explanation offered by the petitioner is confined only to the date of dismissal and does not satisfactorily account for the earlier conduct in prosecuting the suit.

9. At the same time, it is well settled that, as far as possible, disputes should be decided on merits rather than on technical grounds. The respondents have also not seriously opposed the restoration of the suit and have endorsed "No Counter", seeking only the imposition of appropriate costs. Considering the nature of the suit, the fact that an opportunity to prosecute the case on merits would subserve the ends of justice, and at the same time taking note of the repeated negligence on the part of the plaintiff in conducting the trial, this Court is of the view that one final opportunity can be granted to the petitioner, subject to stringent conditions so that the respondents are compensated for the inconvenience caused and the proceedings are not further delayed.

10. Accordingly, this Court is inclined to restore the suit to file subject to payment of costs and with a clear direction that the plaintiff shall diligently proceed with the trial without seeking unnecessary adjournments. It is made clear that any further lapse on the part of the plaintiff will be viewed seriously and dealt with in accordance with law.



Result:

11. In the result, this petition is allowed on the following conditions:

*(i) The petitioner/plaintiff shall pay a sum of **Rs.1,000/- (Rupees One Thousand only)** as costs to the respondents/defendants, in total, on or before **14.08.2026**.*

(ii) On such payment of costs, the dismissal order dated 25.06.2026 in O.S. No. 51 of 2025 shall stand set aside and the suit shall be restored to file.

(iii) The petitioner/plaintiff shall thereafter appear before this Court and proceed with the trial of the suit diligently without seeking any unnecessary adjournment.

*12. Call on **14.08.2026** for compliance.*

This order is dictated to the Typist, typed by her in computer, corrected by me and pronounced by me in the open court on this the 6th day of August 2026.

**District Munsif,
Udhagamandalam.**



Draft/Fair Order:

I.A. No. 05/2026

in

O.S. No. 51/2025

Dated: **06.08.2026**

**District Munsif Court,
Udhagamandalam.**