

In the Court of District Munsif, Mudukulathur

Present : Ms.J.C.Aparna, B.A, L.L.B.,

District Munsif,

Mudukulathur.

Monday the 9th day of June 2025

I.A.No.1/2024

in

O.S.No.12/2023

Kalidass

..... Petitioner/Plaintiff

/VS/

1. Asaraf Ali

2. Kamarudeen

..... Respondents/Defendants

This petition came on 04.06.2025 before this court for a final hearing in the presence of Thiru.ASelvaraj, Learned Counsel for the Petitioner/Plaintiff, Thiru.S.Periyasamy, Learned Counsel for the 2nd Respondent/ 2nd Defendant and 1st respondent/1stdefendant remained set exparte and upon hearing both sides arguments and upon perusing the material records and having stood over till this day for consideration, this court delivered the following:

ORDER

This petition has been filed under Order 9 Rule 9 of CPC to restore the suit in O.S.No.12/2023 which was dismissed for default on 08.12.2023.

2. The contention of the Petitioner/Plaintiff in brief:-

The petitioner herein is the plaintiff in the main suit. The plaintiff has filed the suit for the relief of permanent injunction. The main case was posted for batta to 1st and 2nd defendants on 08.12.2023. On the said date, the petitioner due to ill health was not able to meet his advocate to provide case details. And the case was dismissed for default on 08.12.2023 for non payment of batta. It was neither willful nor wanton. Hence, the petitioner filed this petition to

restore the suit or will be put to irreparable loss and hardship. Hence prays to allow the petition.

3. Brief averments of the 2nd Respondent/2nd Defendant in brief:

The averments made in the petition are false and the petition is neither maintainable under law nor on facts. It is false to state that the petitioner due to ill health was unable to appear before this Court on 08.12.2023 and the suit for dismissed for default. It is stated that the petitioner has intentionally not appeared before this court because he has filed this suit on the basis of oral agreement and since he has no documents to rely to prove this case, the petitioner/plaintiff has intentionally not filed batta in respect of the defendants and the suit was dismissed for default. It is also stated that the petitioner/plaintiff has not produced any documents in support of his ill health. This petition is filed belatedly without any bonafide reason to restore the suit and hence it is liable to be dismissed with heavy costs.

4. Point for consideration:-

Whether the petition be allowed and the relief be granted as prayed for?

No documents filed on either side. Heard both sides.

5. Answer to the Point:-

5.1. The petitioner herein has filed the main suit for relief of permanent injunction. The petitioner in his affidavit states that he was unable to contact his counsel due to ill health. But the respondents states that the petitioner has non placed any documents to support his claim. But seeing that the petitioner has filed this petition within the prescribed period and also stating that he is ready to proceed with the case. This itself would show that the plaintiff was not grossly negligent in the matter. Also considering the fact that the loss to the respondents can be compensated with cost, this court thinks that for the reasons stated in the affidavit it is fit to allow this petition to prevent multiplicity of legal

proceedings. Hence, in order to compensate the 2nd respondent for the hardship caused by the petitioner, it is appropriate to allow this application on payment of costs.

5.2. In the light of the above discussions, this petition is allowed on payment of costs of Rs.500/- to be paid by the petitioner to the 2nd respondent on or before 12.06.2025.

Directly typed by me in my official laptop and formatted by Steno Typist, corrected and pronounced by me in open court on this 9th day of June 2025.

**District Munsif,
Mudukulathur.**

Both side witnesses and documents : Nil

**District Munsif,
Mudukulathur.**

