

IN THE COURT OF THE DISTRICT MUNSIF, PALLADAM

**Present:- Thiru. V. Kalidasan, B.Com., L.L.M.,
District Munsif, Palladam.**

Monday the 9th day of February 2026

I.A. No.2/2025 and IA.3/2025

in

O.S.No.129/2017

Lakshmi`

... Petitioner/Plaintiff

/Vs/

1. Semalayappan

2. Pushpathal

3. Vallinayaki

...Respondents/Defendants

This Petitions coming on 30.01.2026 for final hearing before me in the presence of Thiru.P.Eswaramoorthy, B.A.,B.L., Advocate for the Petitioner and Thiru.A.Chinnasamy, B.A.,B.L., Advocate for the Respondents, upon perusing the Petition, affidavit, Counter statement and other connected materials on record and hearing the arguments of both sides and having stood over till this day for consideration, this court made the following...

COMMON ORDER

i) The petitioner filed the petition in I.A.No.2/2025 Under order 9 rule 9 of CPC to restore the above case which was dismissed for default on 15.06.2023.

ii) The petitioner filed the petition in IA.3/2025 Under Section 5 of the limitation Act and U/s 151 of CPC to condone the delay of 290 days to filing connected restoration petition.

1. Brief averments of the petitions:

The above suit is posted for cross of P.W.1 on 15.06.2023 at the time the petitioner is Unwell and bed rest due to jaundice. Therefore, she could not able to present before this court and conduct the suit. Therefore, this court dismissed the above suit on 15.06.2023. She took country treatment for jaundice now only she recovered from jaundice. now only she met her counsel and came to know that the above suit is dismissed for default. She is filing this petition immediately. She has valid case, chance may be given to her to conduct the suit, She is ready to conduct the suit, she ought to file the restoration petition on or before 14.07.2023, but there is a delay of 290 days to file the above application. Hence, these petitions.

2. Brief averments of the counter filed by the 2nd respondent and adopted by the respondent 1 and 3:

The suit was posted for cross examination of PW1 on 15.06.2023 is true. The petitioner filed proof affidavit on 18.02.2019. The suit was posted for cross examination 24.03.2021 and subsequently the suit for adjourned several hearings for appearance of PW1 for cross examination. She was continuously absent for two years till 15.06.2023. Due to her absence the suit was dismissed for default. The petitioner had not mentioned in the affidavit from which date she was laid up with jaundice and from she took treatment. No medical certificate is produced to prove her illness. This respondent submits vague allegations of illness without any proof is not a ground set aside exparte order. There is no reason much less any valid reason to set a side exparte order. The suit is pending from the year 2017. The petitioner who had no case on merits wantonly and willfully left the suit to dismiss for default and file this petition without any valid

reason. To protract the proceedings endlessly. Therefore, these petitions liable to be dismissed.

3. Points for consideration:

Whether these petitions will be allowed or not ?

4. Answer to the point :

5. Heard both sides. No oral or documentary evidence is let in by the both sides.

6. Answer to the point :

Materials on records perused. It is seen from the records the suit in O.S. No.129/2017 has been filed for permanent injunction. I.A.No.2/2025 has been filed by the petitioners to restore the above case which was dismissed for default on 15.06.2023 and I.A.No.3/2025 has been filed by the petitioners to condone the delay of 290 days to filing connected restoration petition.

7) The learned counsel for the petitioner submitted that on 15.06.2023 the above suit was posted for cross examination of PW1, but, on that day the witness was not able to appeared before this court and subjected herself for cross examination, due to jaundice. The petitioner/PW1 took country treatment for her jaundice. Therefore, the petitioner is not able to appear before this court. Hence, on that day this court dismissed the above suit in dismissed for default. Therefore, this petition to restore the suit is necessarily to be allowed in order to conduct the case.

8) The learned counsel for the respondent submitted that the reason stated by the petitioner is not convincing. The petitioner has not filed any document to show that she took medicine for her jaundice. In order to drag on the

proceedings only, the petitioner purposely failed to appear before this court and allowed this suit to be dismissed for default. There is no merits in the petitioner's case. Hence, this petition is liable to be dismissed.

9) On considering the both side submission and on perusing the records it is seen that when the case posted for PW1 cross, the petitioner/PW1 had failed to appeared before this court. Therefore, this court had dismissed the above suit for default. The only reason stated by the petitioner is that on that day the plaintiff was bedridden suffered jaundice and hence, she could not appeared before this court. In supporting the version of the petitioner, the petitioner has not filed any documentary evidence to show she was took country treatment for her jaundice. The above suit was dismissed for default on 15.06.2023, but, within the prescribed limitation the petitioner has not filed the petition to restore the suit. She filed the petition to restore the suit along with the condonation of delay of 290 days on 30.04.2024 only. On perusal of records it is seen that even before the suit was dismissed for default, the PW1 was continuously absent for very long time. The petitioner has not stated why she was not appeared before this court for subjected herself for cross examination even prior to the dismissal of the suit. Though the reason stated by the petitioner is not convincing, in the interest of justice, in order to provide fair opportunity to the petitioner to conduct her case, this court is inclined to allow this petition. However, the delay caused by the petitioner has to be compensated to the other side.

In the result,

these petitions will be allowed on condition to pay the cost of Rs.3,000/- to the respondent/defendant on or before 03.03.2026. Failing which these petitions will stand dismissed automatically. For compliance Call on 05.03.2026.

Dictated to Typist, and typed directly in computer and corrected & pronounced by me in open Court, on this 09th day of February 2026.

**District Munsif,
Palladam.**

Appendix:-

Petitioner's side Witness and Documents:- Nil

Respondent's side Witness and Documents:- Nil

**District Munsif,
Palladam.**