

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present : Thiru. P.Nagarajan, M.A.,M.L.,
II Additional District & Sessions Judge, Thanjavur.**

**Wednesday the 24th day of June 2026
(Thiruvalluvar Aandu 2057- Aani Matham 10th day)**

I.A. No. 2/2026 in O.S.No.19/2023

C.Kathiravan

.....Petitioner/Defendant

/Vs/

J.John Kennedy

.....Respondent/Plaintiff

This petition having come up for final hearing before me on 19.06.2026 in the presence of Thiru.**C.Kavimani**, Advocate for the Petitioner/defendant and of **Thiru.A.Nalladurai**, Advocate for the respondents/plaintiff and upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

ORDER

This petition has been filed by the petitioner/defendant under order 9 Rule 13 of CPC to set aside the exparte judgment and decree in O.S.No.19/2023 dated 24.02.2026.

(2) The Summary of the Affidavit is as follows:

The petitioner is the defendant in the above suit. The plaintiff filed a recovery of money suit against the petitioner which is unsustainable and untenable in facts and laws. The petitioner initially defended the case as party-in-person and filed written statement. The petitioner has not cross examined the plaintiff in proper or sufficient and that when the case was posted for the petitioner's evidence, he engaged an advocate and filed vakalat. Due to severe jaundice and consequentially health the petitioner was unable to appear before this

court for his evidence as he was undergoing treatment and taking country medicines. Due to his continuous illness, he could not give proper instructions to his counsel and hence he was set ex-parte and the suit was decreed on 24.02.2026. The petitioners non-appearance was neither willful nor wanton but due to unavoidable above medical reasons and he was bedridden and rendered immobile. The petitioner has a good defence on merits and unless the exparte decree is set aside it will be put to irreparable hardship. Hence, prayed to allow this petition.

(3) The summary of counter submitted by the respondent/plaintiff as follows:

All the averments stated in the I.A. except those that are expressly admitted herein and put the petitioner into strict proof of those that are not admitted so. The I.A is false, frivolous, vexatious and filed with ulterior objects and it is not maintainable under law and on facts and has to be dismissed in limine. This respondent/plaintiff denies all the averments and true that the petitioner/defendant appeared in person and filed the written statement and also cross examined the PW1 the plaintiff. When the above said case was posted for the defendant side evidence the petitioner/defendant engaged a counsel and subsequently fell in ill and unable to depose evidence on his side and to get on with the suit. The defendant side evidence on 10.02.2026 and subsequently the case was adjourned for the same reasons on 16.02.2026, 19.02.2026 and 23.02.2026. In all the above said hearings neither the petitioner/defendant nor his counsel appear before this court and the defendant was set-exparte and the case was reserved for judgment on 24.02.2026 and on the same day this court pronounced the judgment. Due to severe jaundice and continuous illness there is no medical documentary evidence has been produced by the petitioner/defendant in support of his allegations. Hence, prayed to dismiss this petition.

(4) Point for consideration:

Whether the petition filed by the petitioner under order 9 Rule 13 of CPC is allowed or not?

(5) Point:

Heard and records perused. The learned counsel for petitioner submitted before this court that due to severe jaundice and consequentially health the petitioner was unable to appear before this court for his evidence as he was undergoing treatment and taking country medicines. Due to his continuous illness, he could not give proper instructions to his counsel and hence he was set ex-parte and the suit was decreed on 24.02.2026. The petitioners non-appearance was neither willful nor wanton but due to unavoidable above medical reasons and he was bedridden and rendered immobile. Hence praying for allowing the petition.

(6) But in contra the learned respondent counsel submitted that the petitioner fell in ill and unable to depose evidence on his side and to get on with the suit. In all the hearings neither the petitioner/defendant nor his counsel appear before this court and the defendant was set-exparte and the case was reserved for judgment on 24.02.2026 and on the same day this court pronounced the judgment. Further, for the severe jaundice and continuous illness of petitioner, there is no medical documentary evidence has been produced by the petitioner/defendant in support of his allegations.

(7) Considering both side arguments and perusal of records, it is found that the petitioner initially defended the case as party-in-person and filed written statement. The petitioner has not cross examined the plaintiff in proper or sufficient and that when the case was posted for the petitioner's evidence, he engaged an advocate and filed vakalat. The

petitioner did not file any medical records to prove his illness. So, the reason stated by the petitioner is not acceptable. But in the interest of justice this court inclines to give one opportunity to the petitioner to contest the case on merit. Hence, it is just and necessary to allow this petition. Hence the point is answered accordingly.

In the result, this petition is allowed. No cost.

Dictated to the Steno-Typist, transcribed by her in computer, corrected and pronounced by me in the open court, this **the 24th day of June 2026.**

II Additional District and Sessions Judge,

Thanjavur.

Petitioner and Respondent side
Exhibits and Witness : Nil

II Additional District and Sessions Judge,

Thanjavur.

Order in

IA.2/2026 in O.S. No.19/2023

Dated: 24.06.2026