

**IN THE COURT OF THE SUBORDINATE JUDGE AT ARNI,  
TIRUVANNAMALAI DISTRICT**

Present : **Tmt. A.Daoudh Ammal, B.A., M.L.,**  
Subordinate Judge, Arni

Saturday, the 01<sup>st</sup> day of March, 2025

**I.A.No.2/2023 in O.S.No.281/2022**

A.Arumugam

... Petitioner/Plaintiff

-Vs-

S.Bhagyaraji

... Respondent/Defendant

This Petition coming before me for final hearing on 29.01.2025 in the presence of Tr.V.Thanigachalam, Advocate for the Petitioner and Tr.V.Arivazhagan, Advocate for the Respondent and having stood over for consideration till this date, this court delivered the following

**ORDER**

Petition filed under Order 9 Rule 9 of CPC to Set Aside the order of Dismissal dated 03.10.2023 in O.S.No.281/2022 and to Restore the suit in O.S.No.281/2022 on file and for further orders.

**Subordinate Judge, Arni.**

**2. Petition Averments in brief:**

The Petitioner had filed this suit against the Defendant for the relief of Specific Performance of contract. While the suit was posted on 03.10.2023 for Trial in the Special List, the Petitioner's counsel had informed about the date of hearing on 03.10.2023 through post. Since the Petitioner was suffering from ill health from the last week of September 2023 and taking native treatment and in bed rest in his village itself, he was unable to appear on the date of hearing. The health condition of the Petitioner got recovered now only and then he approached his counsel and came to know that the said suit was dismissed for default since he did not appear before this court on 03.10.2023. The reason for non appearance of Petitioner on 03.10.2023 before this court is neither wilful nor wanton but only due to the abovesaid bonafide reasons. Hence the Petition.

**3. Counter Averments in brief:**

This application to restore the suit, which was dismissed for default on 03.10.2023 is not sustainable either in law or on facts. This Respondent denies all the averments contained in the affidavit save those that are specifically admitted. The Petitioner is put to strict proof of each and every averments contained in the affidavit. The Petitioner has not filed any Medical Records to show that he was unable to appear before this court on the date of hearing while the suit was posted in the Special List for Trial due to his ill health condition only. Hence the Petitioner had wantonly failed to appear before this court for Trial and has now come forward with this Petition with some false reasons which is not at all satisfactory. This Petition has been filed only to drag on the proceedings of the case and there is no merits in the Petition and hence this Petition has to be dismissed with costs.

**Subordinate Judge, Arni.**

**4. Point for Consideration :**

(i) Whether this Petition filed under Order 9 Rule 9 of CPC to Set Aside the order of Dismissal dated 03.10.2023 in O.S.No.281/2022 and to Restore the suit in O.S.No.281/2022 on file has to be allowed or not?

(ii) To what other reliefs, the Petitioner is entitled for?

5. Heard. Records Perused. There is no oral or documentary evidence let in on both the sides.

**Points No.1 &2:**

6. The Petitioner has stated that the Petitioner had filed this suit against the Defendant for the relief of Specific Performance of contract. While the suit was posted on 03.10.2023 for Trial in the Special List, the Petitioner's counsel had informed about the date of hearing on 03.10.2023 through post. Since the Petitioner was suffering from ill health from the last week of September 2023 and taking native treatment and in bed rest in his village itself, he was unable to appear on the date of hearing. The health condition of the Petitioner got recovered now only and then he approached his counsel and came to know that the said suit was dismissed for default since he did not appear before this court on 03.10.2023. The reason for non appearance of Petitioner on 03.10.2023 before this court is neither wilful nor wanton but only due to the abovesaid bonafide reasons. Hence the Petition. The Respondent has contended that the Petitioner has not filed any Medical Records to show that he was unable to appear before this court on the date of hearing while the suit was posted in the Special List for Trial due to his ill health condition only. Hence the Petitioner had wantonly failed to appear before this court for Trial and has now come forward with this Petition with some false reasons which is not at all satisfactory.

**Subordinate Judge, Arni.**

This Petition has been filed only to drag on the proceedings of the case and there is no merits in the Petition and hence this Petition has to be dismissed with costs. But whereas this court considers that an opportunity has to be given to the Petitioner to establish his case. Hence this court is inclined to allow this Petition to Set Aside the order of dismissal in O.S.No.281/2022 dated 03.10.2023, in the interest of justice without costs.

7. In the result, this Petition stands Allowed, in the interest of justice and the order of Dismissal passed in O.S.No.281/2022 dated 03.10.2023 is set aside and the suit in O.S.No.281/2022 is Restored on file without costs.

Directly dictated by me to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court, on this, the 01<sup>st</sup> day of March, 2025.

Subordinate Judge,  
Arni.

**Petitioner side witnesses and documents:** NIL

**Respondent side witnesses and Documents:** NIL

Subordinate Judge,  
Arni.

**Subordinate Judge, Arni.**