

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHEYYAR

THIRUVANNAMALAI DISTRICT

Present :- **Tmt. K. Naleeni, B.com B.L (Hons), M.L.,**
Principal District Munsif, Cheyyar,
Thiruvannamalai.

Monday, the 21st day of July 2025

I.A.No.07/2024 and I.A 08/2024 in O.S.No.06/2024

K. Rajendran

..... Petitioner/Plaintiff

V.

K.Vazhmuniyan

... Respondent/Defendant

This petition is coming before me on 15.07.2025 for final hearing in the presence of Thiru.Ganeshgandhi, learned Advocate for the Petitioner/Plaintiff and Thiru.G.Gunasekaran, learned Advocate for the Respondent/Defendant and upon hearing both sides and after careful perusal of the entire case records and having stood over for consideration till this day, this Court delivered the following:

COMMON ORDER

i) IA 07/2024 :

This Petition has been filed under Section 5 of the Limitation Act, 1963 to condone the delay of 19 days in filing the restore petition under Order IX Rule 9 of Code of Civil Procedure, 1908.

ii) IA 08/2024:

This Petition has been filed under Order IX Rule 9 of Code of Civil Procedure, 1908 **to set aside** the dismissal for default passed on 02-07-2024 and **to restore** the suit in O.S 06/2024 on the file of this Court.

2. BRIEF AVERMENTS OF THE PETITIONS ARE AS FOLLOWS:

The Petitioner is the Plaintiff in O.S. No. 06 of 2024, filed for a decree of permanent injunction and Declaration against the Respondent/Defendant. The Petitioner states that that the suit had been posted on 02.07.2024 under the Monthly Special List. On that day, the Petitioner had appeared before the Hon'ble Court in the morning. However, due to the boycott of the Advocates, the Court had directed the Petitioner to appear along with his counsel. The petitioner further states that while he proceeded to meet his counsel at the office, the Petitioner had suddenly fallen on the road due to giddiness and also that he was suffering from viral fever and skin ailments. Hence, he had to proceeded to his native place for his medical treatment. The Petitioner further stated that he became aware that the case had been called again for the second time on the same day (02.07.2024) only recently, and that the appearance of the Petitioner along with his counsel had been required. However, due to his illness and absence from town, he had been unable to appear during the second call. Consequently, the Court had dismissed the suit for default and passed an ex parte order against the Petitioner on 02.07.2024.

The petitioner further states that the absence of the Petitioner was neither wilful nor wonton but was solely due to the genuine and unavoidable circumstances stated above. Due to the said circumstances, the petition to set aside the dismissal order and to restore the suit could not be filed within the statutory period, resulting in a delay of 19 days.

Hence, the present petitions are filed under **Section 5 of the Limitation Act, 1963**, praying to condone the delay of 19 days in filing the petition to set aside and under **Order IX Rule 9 of the Code of Civil Procedure, 1908** to set aside the dismissal order dated 02.07.2024 and to restore the above suit.

3. BRIEF AVERMENTS OF THE COUNTER FILED BY THE 1ST RESPONDENT IN IA 7/2024 AND ADOPTED IN IA 8/24 AS FOLLOWS:

The Respondent contends that the Petitioner/Plaintiff has filed this petition without giving proper and valid reasons for not appearing in the Court on the above said date of hearing. The respondents further state that the reasons stated by the Petitioners for their non-appearance is false and that the Petitioner was physically fit on the above date of hearing. The Respondent strongly contends that the Petitioner/Plaintiff willfully not appeared before the Court and that the petitioner is bound to explain each and every day delay. The Respondent further states that the petitioner has filed the application with ulterior motive of delaying the proceeding and that the petition filed is highly vexatious and malafide. He also further state that the Petitioner/Plaintiff has not produced any medical records to prove his allegations. Hence, he prayed to dismiss the petition with costs.

4. POINT FOR CONSIDERATION:

The sole point to be considered by this Court is whether the present petition can be allowed or not?

5. ORAL AND DOCUMENTARY EVIDENCE:

No oral or documentary evidence was adduced on both sides.

6. DETERMINATION:

Heard both sides and Records perused.

On perusal of the records, it is seen that the Petitioner is the Plaintiff in the OS. 06/2024 on the file of the Principal District Munsif, Cheyyar and the suit has been filed for Permanent Injunction and Declaration against the

Defendant. The suit was posted on 02.07.2024 for monthly special list. The Petitioner submitted that he had appeared before the Court on the morning of 02.07.2024. However, due to the Advocates' boycott on that day, the Court had directed him to appear along with his counsel. While proceeding to his counsel's office, the Petitioner had suddenly collapsed on the road owing to giddiness, as he was also suffering from viral fever and a skin condition. As a result, he had proceeded to his native place for medical treatment. The Petitioner further stated that he came to know only at a later stage that the case had been taken up again for the second time on the same day and that his appearance along with his counsel had been required. However, due to his illness and his absence from town, he was unable to be present during the second call. Consequently, the Hon'ble Court had dismissed the suit for default and passed an ex parte order against him on 02.07.2024.

The present petitions have been filed under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 19 days in filing the set aside petition and also under Order IX Rule 9 for restoration of the suit. The reason stated by the Petitioner for the delay are that owing to his giddiness and also on account of viral fever and skin ailment, he was unable to appear before the Court during the second call on the above said date.

As per **Article 122 of the Limitation Act, 1963** an Application to restore the suit under Order IX Rule 9 of Code of Civil Procedure, has to be filed within 30 days from the date of dismissal. However, in the present case at hand, there was a delay of 19 days in filing the Application to restore the suit under Order IX Rule 9. Hence, Application under Section 5 of the Limitation Act, 1963 has been filed to condone the delay in filing the setting aside petition under Order IX Rule 9 of Civil Procedure Code, 1908.

The Application to condone the delay can be admitted even after the expiry of 30 days provided **sufficient cause** has been shown for not making the application within such period. It's well settled law that Section 5 of the

Limitation Act is to be **construed liberally** so as to advance substantial justice. It is necessary that if the delay is not deliberate, it ought to be condoned.

As per Order IX Rule 9 of Code of Civil Procedure, 1908, when a suit has been dismissed, the party may apply to set aside the dismissal order provided sufficient cause has been shown for non- appearance. It's well settled law that Applications under Order 9 Rule 9 has to be construed liberally so as to advance substantial justice. It is necessary that if the non-appearance is not deliberate, it ought to be allowed.

It is seen from the records that the Petitioner/Plaintiff had appeared during the calling hour but could not appear during the second call as he had felled down due to his giddiness and viral fever. However, this Court finds that, the Petitioner has not produced any medical records to prove his claim nor he has examined himself in order to prove the said contentions. It is also to be noted that there are objections from the Respondent side in allowing this Petition on the grounds that each day delay have not been explained and that their non-appearance is willful and that the petitions are filed only with an intention to delay the proceedings. Further, the Respondent avers that the petitioner has filed the suit only to harass the defendant and to drag on the proceedings.

On careful perusal of both side contentions, this court sees that the Reasons stated by the Petitioner are found to be satisfactory. The petitioner has shown sufficient cause for condoning the delay and for his non-appearance. Therefore, in the interest of justice and to avoid multiplicity of proceedings, this Court finds that an opportunity ought to be given to the petitioner by condoning the delay and to conduct his case by allowing this petition. Therefore, this Court condones the delay of 19 days in filing the set aside petition on the above grounds.

Accordingly, the delay is condoned and the the dismissal order dated 02.07.2024 is hereby set aside and the Original Suit in OS. No. 06 of

2024 is restored to file.

7. RESULT :

In the result, both the petitions are hereby allowed. No order as to costs.

Dictated by me to the Steno typist, directly typed by her, corrected and pronounced by me in open court, on this the 21st day of July, 2025.

(Sd/-K.Naleeni)

Principal District Munsif,
Cheyyar.

8. List of Witnesses:

On the side of the Petitioner : NIL

On the side of the Respondent : NIL

9. List of Documents :

On the side of the Petitioner : NIL

On the side of the Respondent : NIL

(Sd/-K.Naleeni)

Principal District Munsif,
Cheyyar.