

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHEYYAR

THIRUVANNAMALAI DISTRICT

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

Monday, the 28th day of July, 2025

I.A.No.01/2024 in O.S.No.206/2012

Sakarapanipillai

..... Petitioner/Plaintiff

V.

1. The District Collector, Thiruvannamalai
2. The Block Development Officer, Cheyyar
3. President, Village Panchayat, Papanthangal Village
4. Prema
5. Rajkumar

..... Respondents/Defendants

This petition is coming before me on **15.07.2025** for final hearing in the presence of Thiru.M.S.Sankarapandian, Learned Advocate for the petitioner and the Respondents 1 to 3 were being called absent and set exparte, Thiru. G. Gunasekaran, Advocate for the Respondents 4 and 5 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:

ORDER

This Petition has been filed by the Petitioner /Plaintiff under Order IX Rule 9 of Code of Civil Procedure, 1908 to restore the suit, which was dismissed for default on 06.03.2024.

2. BRIEF AVERMENTS OF THE PETITION AS FOLLOWS:

The Petitioner is the Plaintiff in the OS.No.206/2012 and the suit was filed against the Respondents/ Defendants. The petitioner states that the Advocate Commissioner was appointed and ordered by the Court to visit the suit property and the same was pending. In the meanwhile, the Advocate Commissioner filed a memo stating that the parties were not co-operating and that he was unable to visit the property. The petitioner further states that, the petitioner's Counsel reported no instructions and withdraw his Vakalath on behalf the Petitioner. The petitioner avers that as he had been affected with stroke, he was bedridden and hence, he was unable to meet his counsel. Thereafter, after the withdraw of the Vakkalath, the Court issued summons to the petitioner. He further states that, on behalf of the petitioner, his wife appeared before the Court and sought time for engaging of counsel. Accordingly, the Court directed the petitioner to appoint a counsel by 06.03.2024 to conduct the case. However, on 06.03.2024, as no counsel was appointed by the petitioner, the suit was dismissed for default with no costs. Hence this petition is filed under Order IX Rule 9 of the Code of Civil Procedure, 1908 by the Petitioner/Plaintiff, seeking to restore the above suit which was dismissed for default on 06.03.2024.

3. BRIEF AVERMENTS OF THE COUNTER FILED BY THE 5TH RESPONDENT AND ADOPTED BY THE 4TH RESPONDENT AS FOLLOWS:

The Respondents states that the petition filed by the Petitioner is false, vexatious, frivolous and is unsustainable either on law or on facts. The petitioner has already stated that he will appoint a counsel in the Court on 16.02.2024, and therefore, the counsel will be appointed and the case will be conducted from that date. Even though the petitioner has obtained an order on 06.03.2024, the petitioner has not conducted the case in the Court, but has

postponed the case by saying that it will be filed today or tomorrow, and has filed this petition to include 4 or 5 defendants who are not related to the case as parties to the case, thereby misleading the defendants. The petitioners had already pursued the above suit against defendants 1 to 3, demanding that the road should not be constructed. The respondent further states that due to the pending of this suit, the Advocate Commissioner inspected the suit properties and noted in the Advocate Commissioner's report that the village road from Pappanthangal Village to Puthur was constructed and in operation, the petitioner not only amended the remedy in the suit but also amended the property details, removed the remedy against defendants 1,2,3, and amended the suit against defendants 4,5, who were newly added as defendants, and the petitioner wasted time without conducting the case. The petition filed by the petitioner is not the first petition. The above suit has been dismissed by the Court several times without the petitioner pursuing the case. However, it is a common practice that the petitioner files a petition each time citing false reasons, stating that he is unwell and unable to meet a counsel, and then files the case based on that. Each time, these respondents, thinking that the case is over, are receiving treatment in Chennai for ill health in their old age. In such circumstances, the petitioner's filed the petition seeking to restore the suit which was dismissed against the petitioner on 06.03.2024, taking cognizance of the inability of the respondent, is not maintainable in law and should be dismissed. The petitioner's petition is causing repeated mental distress to the respondents. The petitioner's claim has no connection with the cause of action and the property of the respondents. The cause of action filed by the petitioner is invalid in law. The petitioner has filed the above claim unnecessarily and has caused great loss to the respondent. The petitioner is responsible for the loss, damage and inconvenience caused to the respondent. Therefore, since the reason mentioned in the petition is false, the petitioner is the usual reason for delaying the case every time, and the petitioner's petition has not been filed in the court with true documents, the

petitioner's petition is liable to be dismissed. Hence, the Respondents prays to dismiss the present petition with costs.

4. THE POINT FOR CONSIDERATION :

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

5. There is no oral or documentary evidence on both the sides.

6. DETERMINATION :

Heard the rival submissions on both sides and the relevant records were carefully perused.

On perusal of the records, it could be seen that, the case was posted for engaging a counsel on the side of the plaintiff without fail or for further orders on 06.03.2024. However, as the plaintiff had not appeared before this court the petitioner's wife appeared for him. Accordingly, the Court directed the petitioner to appoint a counsel by 06.03.2024 and conduct the case. However, on 06.03.2024, no counsel was appointed by the petitioner. Consequently, as the suit was pending from the year 2012 and no steps had been taken, the suit was dismissed for default on the aforesaid date. The Petitioner has now filed this petition seeking to set aside the dismissal order and thereby restoring the above said suit.

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.

In the present case at hand, the petitioner contends that he was unable to appear on the above hearing date due to his illness. 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 contention. The Respondent strongly objects in allowing this petition by stating that the reasons for the non-appearance is false and fabricated and that the default is happening repeatedly.

On careful perusal of the records, it could be seen that the suit was filed in the year 2012 and has been pending since then. Further, the suit had already been dismissed for default of the plaintiffs three times, which goes to show that despite giving opportunities, the Plaintiff has repeatedly defaulted in conducting the suit. It is to be noted that this Petition has been filed within the stipulated time period which is 30 days from the date of dismissal as per **Article 122 of the Limitation Act, 1963**. Eventhough the reasons stated by the Petitioner are not satisfactory to this Court, but only in the interest of justice and considering the age of the petitioner, this Court finds that one final opportunity is granted to the Petitioner to conduct this case. Further that unless and until an opportunity is provided to the Petitioner present his case before this court, the matter in issue cannot reach its finality. Therefore, considering the nature of the suit and in the interest of justice and further to avoid multiplicity of proceedings and the fact that the suit is pending from the year 2012, this Court is inclined to allow this petition on condition that the case should be conducted by the petitioner regularly. However, for the severe hardship caused to the Respondents, this court is inclined to allow this petition with costs of Rs. 1500/- to be paid on or before 31-07-2025.

Accordingly, the dismissal order dated 06.03.2024 is hereby set aside and the Original Suit in OS. No. 206 of 2012 is restored to file on payment of

costs of Rs. 1500/- to be paid to the Respondents on or before 31-07-2025, failing which the petition shall be dismissed by this Court.

7. RESULT :

In the result, this petition is hereby allowed on payment of costs of Rs. 1500/- to the Respondents on or before 31-07-2025, failing which the petition shall be dismissed. For reporting compliance of order on 01-08-2025. Call on 01-08-2025.

Dictated by me to the Steno typist, directly typed by her, corrected and pronounced by me in open court, on this the 28th day of July, 2025.

(Sd/-K.Naleeni)

Principal District Munsif,
Additional District Munsif (FAC),
Cheyyar.

8. List of Witnesses:

On the side of the Petitioner : NIL
On the side of Respondents : NIL

9. List of Documents :

On the side of the Petitioners : NIL
On the side of Respondents : NIL

(Sd/-K.Naleeni)

Principal District Munsif,
Additional District Munsif (FAC),
Cheyyar.