

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.

Friday, the 01st day of August, 2025

I.A.No.02/2024 in O.S.No.89/2021

1. Dhanapal
2. Yogeshwaran
3. Mageshwaran

...Petitioners/Plaintiffs

V.

1. Egambaram
2. The Sub Registrar -2, Cheyyar

... Respondents

This petition is coming before me on 23.07.2025 for final hearing in the presence Thiru. K.Vivekanandan, Learned Advocate for the petitioner and Thiru. M.Mani and Thiru.G.Natarajan, learned Advocates for the 1st Respondent and the 2nd Respondent being called absent and set exparte 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 under Order IX Rule 9 of Code of Civil Procedure, 1908 **to set aside** the dismissal dated 07.01.2023 and **to restore** the suit in O.S 89/2021 on the file of this Court.

2. BRIEF AVERMENTS OF THE PETITION AS FOLLOWS:

The Petitioner is the third Plaintiff in the suit OS.No.89/2021. The

petitioner has filed this petition on behalf of himself and other petitioners also. The petitioner states that, the suit was listed for trial and was posted on 07.01.2023. However, as the Petitioner could not appear, the suit was dismissed for default with costs on the aforesaid date. The Petitioner further states that as he was seriously ill on the said date, he could not appear before the Court. He further states that his non-appearance on 07.01.2023 was neither willful nor wanton and that it may be excused. Hence, the present petition is filed under **Order IX Rule 9 of the Code of Civil Procedure, 1908**, seeking to set aside the dismissal order dated 07.01.2023 and to restore the suit to file.

3. BRIEF AVERMENTS OF THE COUNTER FILED BY THE 1ST RESPONDENT AS FOLLOWS:

The Respondents state that the petition filed by the Petitioner is false, frivolous, not maintainable either on question of law or on facts and is liable to be dismissed. The Respondents deny all the allegations in the petition. 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 Respondent further contends that the plaintiff have not stated clearly as to the type of illness suffered by him. 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. 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 Petitioner is the third Plaintiff in the suit OS.No.89/2021. The suit was posted on 07.01.2023 for trial but as the petitioner was seriously ill, he could not attend the Court. However, as there was no appearance and no representation, the suit was dismissed for default with costs. Hence, the present petition to set aside the dismissal and to restore the 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.

It is seen from the records that the Petitioner/Plaintiff had not appeared due to his illness. However, this Court finds that, the Petitioners have not produced any medical records to prove their claim nor they have examined themselves in order to prove the said contention. 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 to avoid the multiplicity of the proceedings, 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, this Court is inclined to allow this petition

on the aforesaid grounds.

Accordingly, the dismissal order dated 07.01.2023 is hereby set aside and the Original Suit in OS. No. 89 of 2021 is restored to file. Issue Notice to Respondents notifying that the OS. No 89 of 2021 is restored. No order as to costs.

7. RESULT :

In the result, this petition is 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 01st day of August, 2025.

Principal District Munsif,
Cheyyar.

8. List of Witnesses:

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

9. List of Documents :

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

Principal District Munsif,
Cheyyar.