

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

**Present : Tmt. R.D. Gurulakshmi, M.A., M.L., P.G.D.I & C.L.,
District Munsif, Tiruttani.**

Dated the Tuesday of 29th Day of April 2025

I.A.No.4/2025 in OS.No.43/2015

(CNR.No.TNTR21-000069-2015)

G.Jayaseeli

...

... Petitioner/ Plaintiff

/ Vs/

S. Amavasai

... Respondent/ Defendant

This petition came up before me for the final hearing on 09.04.2025 in the presence of M/s. M. Mohan Raju, G. Sivakumar, Counsels for Petitioner/ Plaintiff, M/s. V.S. Velayudham, Counsel for Respondent/ Defendant, upon hearing both sides and having stood over for consideration till this day, this court delivered the following:

ORDER

The petition is filed by the petitioner under order 9 Rule 9 of CPC to restore the suit which was dismissed for default on 26.11.2024.

1. Petition averments in brief:-

The suit was posted on 26.11.2024 for trial. The petitioner's counsel informed the same to the petitioner. Since the petitioner's right leg was amputated by operation due to sugar, she was immobilized and bedridden. So the petitioner could not attend this court for trial on 26.11.2024. Hence the suit was dismissed for default on 26.11.2024. The petitioner's absence is neither willful nor wanton. The petitioner has got good case in the above suit. The petitioner will be put to irreparable loss and hardship if this suit is not restored. Therefore the petitioner is filed this petition.

2. Counter filed on behalf of the respondents in brief:-

(a) The petition is not maintainable either in the eye of law or on facts. The averment in para No.3 of affidavit are false except the suit was dismissed for default. The petitioner/ plaintiff filed this petition without any proof of medical evidence to

prove her absence before this court on 26.11.2024. The same reason was given in earlier petition also. The petitioner/ plaintiff was filed this vexatious petition to drag on the proceedings and she is not interested to conduct the case. This suit was already dismissed for default earlier and same was restored very long back. Further again the above suit was posted for trial and after giving so many adjournments to the petitioner and the petitioner didn't came to court and conducted the suit willfully and wantonly. Therefore the said suit was dismissed for default on 03.07.2024.

(b) Immediately the petitioner filed petition to restore the suit in IA.No.2/2024 and the same was allowed on 22.10.2024 on payment of cost. After restore the earlier petition on 22.10.2024 she was never informed to court that she was affected for the said medical ground. If she was really affected she ought to have been stated in this court. But she did not done. After restoration of the suit, the court granted time to commence the trial. But the petitioner not commence trial. The petitioner filed this vexatious petition again and again. The petitioner filed this petition to drag on the case.

(c) The respondent affected by paralysis and he was unable to walk without help of another. The respondent took treatment and he came to court with his daughter to attend the court proceedings. The above suit was filed for permanent injunction against the respondent and amended the relief of declaration. The above suit was posted in the list on 03.07.2024 and the petitioner/plaintiff willfully and voluntarily absent and suit was dismissed for default. Again this petition filed and restore the suit on 22.10.2024 and again suit was dismissed on 26.11.2024. This is third time of dismissal of suit. The petitioner is not interest to conduct the suit and she was dragon the suit without appearing and dismissal of suit.

(d) The petitioner filed this vexatious petition to delay of the case and there is no bonafide reasons stated in the petition/affidavit for restore the suit. The reasons that her right leg was amputated by operation due to sugar and immobilized and bedridden are all false and invented for filing of this false petition. If really such reason is true how she came to Tiruttani and sign the petition to restore the suit with

short period of dismissal of above suit. Further there is no medical certificates were filed to prove her illness. There is no sufficient reasons stated in the affidavit to restore the suit. If this petition is allowed this respondent will be put into much loss and hardship. Hence this petition is to be dismissed with costs.

3. Point for determination:-

Whether the petitioner is entitled to the relief as prayed for? or not?

4. Heard both side. According to the petitioner, at the time of suit was posted in the trial on 26.11.2024, the petitioner's right leg was amputated. So the petitioner could not attend this court for trial on 26.11.2024. The petitioner has got good case in the above suit. Therefore petitioner prays to allow the petition.

5. Respondent resisted the petition by contending that the petitioner filed this vexatious petition again and again to restore the suit. This suit is dismissed for default for third time. The petitioner filed this petition to drag on the case. Medical certificate was not produced to show her right leg amputated. Hence, this respondent prays to dismiss the petition with costs.

6. Originally this suit posted trial on 17.04.2017. The petitioner filed various petitions to drag on the trial. Finally this suit is posted in the trial on 26.11.2024. On 26.11.2024 plaintiff not present and plaintiff not ready to proceed the case. Hence suit is dismissed for default on 26.11.2024. There is no valuable reasons stated by the petitioner in this petition. Medical certificate was not produced by the petitioner to show her right leg amputated.

7. The main objection of the respondent is that the petitioner is not interest to conduct the suit and she was drag on the suit without appearing and dismissal of suit. Event though considering the fact and circumstances of this case, this court is of view that in the interest of justice to provide the petitioner an opportunity to prove her case, to prevent multiplicity of proceedings and for proper adjudication of the case, this petition has to be allowed on cost.

In the result, this petition is allowed on condition that the petitioner has to pay a cost of Rs.2500/- to the respondent on or before 02.06.2025 failing which this petition stands dismissed. Call on 02.06.2025.

Dictated to my Steno – Typist, typed by her directly in computer, corrected and pronounced by me in open court, this the 29th day of April 2025.

District Munsif,
Tiruttani.

Petitioner's and Respondent's side Exhibits and Witnesses :- Nil

District Munsif,
Tiruttani.