

**BEFORE THE PRINCIPAL DISTRICT COURT  
VELLORE DISTRICT**

**Present:- Dr.P.Murugan**  
(J.O.Code - TN1793)  
Principal District Judge

Thursday, the 20<sup>th</sup> day of March, 2025

**I.A.No. 1 of 2024**  
in  
P.O.P.No.171 of 2021

1. Minor M.Suwethan, aged 10 years,  
rep. by his father P.Maharaja
2. P.Maharaja

. . . Petitioners

-vs-

1. Little Flower Matriculation School,  
represented by its Correspondent, Gudiyattam.
2. The Chief Educational Officer, Vellore District.
3. The District Collector, Vellore District.

. . . Respondents

This petition was coming before me on 06.03.2025 for hearing in the presence of Thiru.J.Arumugham, counsel for the petitioners and, of Thiru.S.Gunasekaran and Thiru.G.Vijaya Baskar, counsel for the 1<sup>st</sup> respondent and, Thiru.V.Natanasigamani, Government Pleader for the respondents 2 and 3 and, upon hearing the enquiry of both sides and, upon perusing the relevant records, this court passes the following:-

**O R D E R**

Petition is filed under Order 9, Rule 9 of C.P.C. to restore the pauper original petition, which was dismissed for non prosecution on 19.06.2024.

2. Brief facts from the affidavit of the 2<sup>nd</sup> petitioner is as that the pauper original petition was posted on 19.06.2024 for enquiry in which proof affidavit has to be filed on the side of the petitioner. On that day 2<sup>nd</sup> petitioner Mr.P.Maharaja was present with the proof affidavit, but his counsel could not come up to this court wherein the said counsel was engaged in another court. In the given circumstances, this court dismissed the said pauper original petition. Hence, this petition has been filed by the petitioners as party-in-person with permission to engage another counsel in due course. Unless this petition is allowed, prejudice will be caused. Hence, this petition.

3. Brief facts from the counter filed by the 1<sup>st</sup> respondent is as that since the petitioner has not come forward to proceed with the enquiry on 19.06.2024, this court observed that the petitioner present and he is

not ready to proceed further, therefore, it was dismissed for non prosecution. Since the case was dismissed for non prosecution, the petition filed under Order 9, Rule 9 of C.P.C. is not maintainable and the remedy is only for filing of appeal. Therefore, the petition is devoid of merits and liable to be dismissed.

4. Counsel for the respondents 2 and 3 has endorsed no counter.
5. Heard both sides. Perused the case records. Considered the submissions raised by both sides.
6. The point for consideration is as to whether the restoration application is to be allowed or not?
7. The petitioners filed pauper original petition as indigent persons to entertain the main suit for compensation against the 1<sup>st</sup> defendant. Since the pauper original petition was posted for enquiry on 19.06.2024, the 2<sup>nd</sup> petitioner was present before this court, wherein the 1<sup>st</sup> petitioner is the minor, represented by his father 2<sup>nd</sup> petitioner, but not ready to proceed further, hence, the case was dismissed for non prosecution. The reason assigned by the petitioner is as that even though the 2<sup>nd</sup> petitioner was present before this court with proof

affidavit but his counsel could not appeared before this court, therefore, the 2<sup>nd</sup> petitioner was not ready to proceed further, hence, the pauper original petition was dismissed. Hence, this application has been filed within the limitation period of 30 days to restore the case on file to proceed further.

8. The main objection of the 1<sup>st</sup> respondent is as that Order 9, Rule 9 C.P.C. says only the case which was dismissed for default on the ground of non appearance, the application under Order 9 Rule 9 can be entertained, but in our case the pauper original petition was dismissed for non prosecution and, therefore, the remedy is only by way of appeal.

9. Order 41 of C.P.C. is procedural law and section 96 of CPC is substantive law applicable only appeal from original decrees. Since the pauper original petition was dismissed for non prosecution Order 41 of C.P.C. would not applicable. Order 43 of C.P.C. is procedural law and section 104 of CPC is substantive law applicable for appeal from orders. On perusal of Order 43 of C.P.C. certain appeals can be filed against the orders passed in some of the provisions mentioned

therein. Here in our case, the pauper original petition was dismissed, though the 2<sup>nd</sup> petitioner appeared but not ready to proceed further. By reading of Order 9, Rule 9 it is contended by the 1<sup>st</sup> respondent's counsel that only for non appearance of the party, the Order 9 Rule 9 CPC application is maintainable, but in our case, the petitioner appeared but not ready to proceed, therefore, the said application is not maintainable.

10. As referred in Order 41 and Order 43 of C.P.C. which are not applicable to the case facts in our hand wherein there is no original decree as of now and the Order 43 C.P.C. does not provide the non prosecution dismissal case for appeal and, therefore, the contention of the 1st respondent that the appeal would lie is not at all applicable to our case facts and circumstances. When this court called upon the said learned counsel to enlighten the court about is there any direct legal point by way of precedent to accept his view that the non prosecution case which was dismissed can not be restored under Order 9, Rule 9 of C.P.C.

11. When the same point was put on to the petitioners counsel, he contended that though Order 9, Rule 9 says for non appearance when the suit was dismissed for default the said Order 9 Rule 9 CPC provisions can be interpreted for non prosecution also. In our case though the 2<sup>nd</sup> petitioner appeared before this court but he was not ready to proceed further because of his counsel was engaged in another court, this court dismissed the case with observation that it was dismissed for non prosecution. The nomenclature of the order shows that the case was dismissed and it amounts to dismiss for default. Eventhough, the 2<sup>nd</sup> petitioner appeared but not ready to proceed further, therefore, the appearance of the petitioner was recorded which was also admitted by the 2<sup>nd</sup> petitioner in his affidavit one or the other way no straight jacket formula would be applied but some leniency may be shown to proceed the main issue and main controversy to be decided in the final decision. Therefore, there is no prohibition to entertain this application under Order 9, Rule 9 of CPC.

12. After the matter was reserved on 12.03.2025 the learned counsel for the 1<sup>st</sup> respondent placed decision of the Hon'ble Karnataka High

Court in *M/s.Sunita Chemicals Pvt. Ltd. v. Canara Bank & Ors* AIR 1987 Karnataka 198 in which it was held that the provisions contained in Order 9 of CPC do not apply to the petitions filed under Order 33 of CPC. Another decision of Bombay High Court in *State Bank of India v. M/s.Kumar Apparel Industries & Ors* AIR 2003 Bombay 128 wherein it was held that the dismissal of the suit for non prosecution Order 9 Rule 9 CPC has no application as the plaintiff has appeared in the matter. Before placing these two decisions, the learned counsel for the 1<sup>st</sup> respondent has given notice to the petitioners.

13. The learned counsel for the petitioner filed a memo along with above two citations taken print out from the website. In that memo it is submitted by the petitioner's counsel that cited two decisions from the 1<sup>st</sup> respondent side is applicable to the facts of the petitioners case in their favour. On close perusal of both the decisions, though it has been discussed with Order 9, Rule 9 not applicable to the proceedings under order 33 of CPC and the Bombay High Court ruling says that when the suit was dismissed for non prosecution, that these citations are applicable in favour to the petitioner is not correct at all.

14. Since those decisions are from other High Courts, this court has done some research. Under such research, it came to light in the Hon'ble High Court of Madras case in *P.Ganesan v. Uco Bank* 1998 (2) CTC 290 in which the Hon'ble High Court of Madras referred the provisions of Order 9, Rule 9, section 2(2), Sec.96, Order 41, Order 17, Rule 3, etc. by taking note of the early decision of Madras High Court in *Kaliappa v. Kumarasami*, AIR 1926 Mad. 971 which is Division Bench Judgment and also the Kerala High Court Judgment in *Kuruvilla Chandy v. Hassan Bava Rawther* 1969 K.L.T. 402 and Allahabad High Court decision in *Allah Bux v. Budha* AIR 1939 Allahabad 451, Division Bench of Patna High Court in *Damodar Das v. Raj Kumar Das*, AIR 1922 Patna 485 and Supreme Court decision in *Prakash Chander Manchanda v. Janki Manchanda*, and *Puthuvachola Muhammed v. Narayanikutty Amma & Ors* 1991 (3) ILR Kerala Series (593) and Mulla on C.P.C. Finally, held that the non prosecution dismissal order passed by the trial court appeal would not lie and only remedy is to file an application to restore the case.

15. In the High Court case referred first, the case was dismissed for non prosecution against which appeal was filed by the plaintiff therein in which appeal was allowed and the matter was remitted back to the trial court to proceed further. In the given circumstances, the defendant therein prepared revision petition contending that appeal would not lie and only Order 9, Rule 9 CPC applicable to restore the suit. By taking note of all the precedents referred above, finally, the Hon'ble High Court of Madras held that when the suit or any other proceedings was dismissed for non prosecution only Order 9, Rule 9 applicable to restore the suit or other proceedings and no appeal would lie.

16. In view of the above legal precedents cited by the 1<sup>st</sup> respondent and this court also done research the precedent from our own High Court decision is directly available to the facts of our case, therefore, the citations cited by the 1<sup>st</sup> respondent has no force at all. Our Hon'ble High Court also referred its earlier Division Bench Judgment, Patna Division Bench Judgment, Supreme Court Judgment and other High Courts Judgment, therefore, the precedents of our Hon'ble High

Court of Madras is applicable to this case facts directly and, therefore, I am relying the decision of our Hon'ble High Court of Madras. Therefore, the contention of the 1<sup>st</sup> respondent has no legs to stand.

17. Even assuming for a moment if Order 9, Rule 9 is not applicable, where there is no appeal remedy for non prosecution dismissal either in Order 41 or Order 43 of C.P.C. but section 151 of C.P.C. deals inherent power of the civil court to meet out the exigency, and by quoting wrong provision would not preclude the party to agitate his right and, therefore, the contention of the 1<sup>st</sup> respondent cannot be permissible one and the petition is to be allowed.

18. The respondents 2 and 3 have no counter at all. Eventhough, the petitioners have stated section 151 of C.P.C. and it is settled law that quoting of wrong provision of law would not preclude the party to agitate his substantial right in the main case. Looking at all angle, the contention of the 1<sup>st</sup> respondent has no force at all. The petition is liable to be allowed wherein it was filed within the limitation period of 30 days and, therefore, this court is of the considered view that the petition is allowed. The point is answered in favour to the petitioners.

**19. In the result:-**

(i) The petition is allowed;

(ii) Pauper original petition dismissal order dated 19.06.2024 is *set aside* and the Pauper Original Petition No.171 of 2024 is restored on file; and

(iii) No cost.

Dictated to the Steno-typist, transcribed and computerized by her, corrected and pronounced by me in the Open Court, on this day the 20<sup>th</sup> day of March, 2025.

Principal District Judge  
Vellore District

**Annexures :- NIL**

P D J  
Vlr