

**BEFORE THE PRINCIPAL DISTRICT COURT
VELLORE DISTRICT**

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

Tuesday, the 15th day of April, 2025

I.A.No.02 of 2025

in

O.S.No.118 of 2024

AND

I.A.No.03 of 2025

in

O.S.No.118 of 2025

I.A.No.02 of 2025:-

M.Manikandan

...Petitioner/Plaintiff

-vs-

C.Jaganathan

... Respondent/Defendant

I.A.No.03 of 2025:-

M.Manikandan

...Petitioner/Plaintiff

-vs-

C.Jaganathan

... Respondent/Defendant

Both petitions were coming before me on 02.04.2025 for hearing in the presence of Thiru. G.Balamurugan, counsel for the petitioners in both petitions and the respondent called absent and set exparte on 02.04.2025 in both petitions and, upon hearing the petitioner side in both petitions and upon perusing the case records, this court delivers the following:-

C O M M O N O R D E R

I.A.No.2 of 2025 is filed under section of 5 of the Limitation Act to condone the delay of 61 days in filing the petition under Order 9, Rule 9 of C.P.C.

2. I.A.No.3 of 2025 is filed under Order 9 Rule 9 of C.P.C to restore the suit which was dismissed for default on 06.11.2024.

3. Since, both the petitions are interconnected to one another wherein I.A.No.2 of 2025 is to condone the delay in filing the restoration application and I.A.No.3 of 2025 is to restore the suit on file, more or less common affidavit has been filed in both applications and the respondent was called absent and set exparte in both petitions, therefore, at the interest of justice both applications are disposed in this common order.

4. Brief facts from the affidavit of the petitioner in both applications is as that the petitioner filed the suit for recovery of money in which the respondent was set exparte. The main case was posted on 06.11.2024 for exparte evidence and on that day the petitioner could not appear before this court, therefore, the case was dismissed for default. Since the petitioner was affected by viral fever,

could not able to appear before this court and in his absence suit was dismissed. After recovery from the viral fever, the petitioner contacted his counsel and came to know that the suit was dismissed for default on 06.11.2024 and there is a delay in filing the restore application and the delay of 61 days is neither willful nor wanton. Therefore, both applications have been filed, one is to condone the delay of 61 days and another one is to restore the suit on file.

5. The respondent was called absent and set exparte on 02.04.2025 in both applications.

6. Heard the petitioner side. Perused the records. Considered the submissions.

7. The points for consideration is as to:-

(1) Whether 61 days delay in filing the restoration application is to be condoned?

(2) Whether restoration application in I.A.No.03 of 2025 is to be allowed or not?

Point Nos.1 and 2:

8. The petitioner filed the suit for recovery of money based on the pronote. In the suit, the defendant was set exparte and, therefore, for

taking exparte evidence this case was posted on 06.11.2024. Having the petitioner did not appear on that day, the suit was dismissed. The reason for the delay in filing the restore application is that the petitioner sustained viral fever and there is a delay to contact his counsel.

9. To support that the petitioner sustained viral fever and taken treatment, there is no piece of medical records. Now we are living in a technical world and within a fraction of second every movement and activities are exchanged by way of smart phone, social media and telecommunication. If really, the petitioner was not well on 06.11.2024, it is his duty to inform his counsel about his position to get the case be adjourned but having neither the petitioner nor his counsel appeared before this court on 06.11.2024, the case was dismissed.

10. Even after that, it is his duty to contact his counsel to know about the case progress and vice versa the counsel also have to inform his client about the dismissal of the case, wherein both the petitioner and his counsel did not appear. The reason for viral fever may be evasive one. But having no medical record for the treatment taken by

the petitioner, it is his duty to come over the court to file the restore application within 30 days. Having a delay of 61 days, after 30 days altogether nearly 3 months the petitioner kept silent for the reasons that the petitioner sustained viral fever, without any medical record it cannot be entertainable.

11. Even then to decide the main case on merits, this court is of a firm view that both applications are liable to be allowed on payment of cost of Rs.1,500/- to each application totally Rs.3,000/- to be paid by the petitioner in both petitions to the District Legal Aid Services Authority, Vellore within a week and after production of proof both petitions will be allowed, failing which these petition would stand dismissed and these two points are answered conditionally.

12. To allow these applications;

(i) The petitioner in I.A.No.2 of 2025 is directed to pay cost of Rs.1,500/- to the District Legal Aid Services Authority, Vellore on or before 22.04.2025 and produce a proof on 23.04.2025;

(ii) The petitioner in I.A.No.3 of 2025 is directed is to pay cost of Rs.1,500/- to the District Legal Aid Services Authority, Vellore on or before 22.04.2025 and produce a proof on 23.04.2025;

(iii) Failing compliance, both petitions will stand dismissed;
and

(iv) For compliance, call on 23.04.2025.

Dictated to the Steno-typist, transcribed and computerized by her, corrected and pronounced by me in the Open Court, on this day the 15th day of April, 2025.

Principal District Judge
Vellore District