

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT  
PRESENT: THIRU. K.VENKATESAN, B.A., B.L.,  
(J.O.Code – TN02266)  
DISTRICT MUNSIF, KATPADI**

Tuesday, this the 8<sup>th</sup> Day of April – 2025

**I.A.No. 4 of 2023  
In  
O.S.No. 33 of 2021  
(CNR.No.TNVL23-000060-2021)**

A.Subramani Naidu

.....Petitioner/Plaintiff

**-Vs-**

1. The State of TamilNadu,  
Rep.by its District Collector of Vellore District  
Collectorate Office, Sathuvachari, Vellore – 9.
2. The Tahsildar, Katpadi Taluk Office,  
Katpadi Taluk, Vellore District.
3. The Revenue Inspector, Ponnai Village Madura,  
Katpadi Taluk, Vellore District.
4. The Village Administrative Officer,  
V.A.O. Office, NPN Palayam Village,  
Ponnai Village Madura, Katpadi Taluk.

.....Respondents/Defendants

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. S.Dhayanithi, the Counsel for the Petitioner, and after due receipt of notices, the Respondents were represented through the Learned Government Pleader, but

even after providing sufficient opportunities, the Respondents have failed to file their Counter, and they were set Ex-parte on 22.08.2024, and upon perusing the petition, and the entire case records, and having stood over before this court for consideration till this date, this Court delivers the following:

### **ORDER**

This petition has been filed by the Petitioner/Plaintiff under under Section 5 of The Limitation Act to condone the delay of 72 Days in filing this petition to restore the Suit which was dismissed for default on 26.07.2023 for non-appearance.

1. **Brief averments of the Affidavit filed by the Petitioner is as follows:-**

The Petitioner is the Plaintiff in the above Suit, and the said Suit was posted for Ex-parte evidence on 26.07.2023. In the meantime, the Petitioner was fell in ill and suffering from Viral Fever, and taking treatment and totally bedridden and as per advise of the Doctor, he had taken bed rest for the Past 3 Months. Subsequently, due to some inadvertent reasons in family problems, the Petitioner could not able to contact his Counsel to inform about his inability and he could not able to appear in person on 26.07.2023. Due to his age and sudden ill health and stomach paid, the Petitioner could not able to appear before this Court. Now only, after recover from his ill health and family situation, approach his advocate, and came to know that this Court dismissed the Suit on 26.07.2023 for default due to his non-appearance. In fact, the Petitioner's

Counsel also could not able to represent the case due to his personal inconvenience due to some inadvertent reasons. Due to the above said reasons, the Petitioner could not able to appear before this Court on that date, and he could not take Ex-parte evidence. The above mistake is neither willful nor wanton, and there is no willful default on his part. Hence, the Petitioner is filing this petition to condone the delay of 72 days in filing the petition to restore of the above Suit in O.S.No. 33 of 2021 which was dismissed for default on 26.07.2023. If the petition is not allowed, he will be put to great hardship and lose. No prejudice will be caused to the Respondents/Defendants in the event of allowing this petition, and prayed to allow the petition.

2. Even though Respondents were appeared through their Learned Government Pleader, but even after providing sufficient opportunities, the Respondents have failed to file their Counter, and they were set Ex-parte on 22.08.2024.

3. Neither the Petitioner nor the Respondents have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

a) Whether this petition is entitled to be allowed or not?

5. **Answering to the Point:-**

5.1 Heard. Records Perused. Upon careful perusal of this case, it is found that the Suit has been filed for Declaring the Plaintiff's right and title over the Suit property and for consequential Permanent Injunction restraining the Defendants from interfering

with his peaceful possession and enjoyment of the Suit property, and to Declare the alleged Notice dated 16.02.2021 is Null & Void and the same will not bind him, and for costs.

5.2 The present Petitioner is the Plaintiff and the Respondents herein are Defendants in the above Suit. Therein, the Defendants have not filed their respective Written Statements, and they were called absent and set Ex-parte on 22.06.2022. While the Suit was stands posted for Ex-parte evidence, the Plaintiff has filed 2 adjournment petitions, and those petitions were allowed. Thereafter, this Court has passed several conditional orders as against the Plaintiff, to commence the evidence on his side. When the Suit is pending at the Ex-parte evidence stage, on 26.07.2023, the Plaintiff has not appeared and not commenced his side evidence. Having observed the said conduct of the Plaintiff, this Court dismissed the said Suit on 26.07.2023 for default, and dismissed the connected I.A.No. 98 of 2021 also.

5.3 This petition has been filed by Petitioner to condone the delay of 72 days in filing petition to restore the Suit which was dismissed for default on 26.07.2023 in the above O.S.No.33/2021. The Petitioner has stated in the affidavit that on 26.07.2023, he was fell in ill and suffering from Viral Fever, and taking treatment and totally bedridden and as per advise of the Doctor, he had taken bed rest for the Past 3 Months, and thereafter, there was family problems, and thus, he could not able to contact his Counsel to inform about his inability and also, he could not able to appear in person on

26.07.2023, and having noted the absence of the Petitioner/Plaintiff, this Court dismissed the above Suit for default. At that stage, the Petitioner/Plaintiff has come forward & filed the present petition to condone the delay along with petition to restore the Suit. On the other hand, the Respondents had not file their Counter, and they were called absent and were set Ex-parte.

6. It is pertinent to note that the Petitioner has not produced any oral or documentary evidence to prove the reason stated in the petition Affidavit. This Court of the view that it is well settled principles of law, the opportunity should be given to the parties to prove their case. Normally, the set aside petition as to be considered liberally as per the decisions of Hon'ble Apex Court in various cases. The Legislature has conferred the power to set aside the Order by enacting the provisions in order to enable the Courts to do substantial justice to parties by disposing of matters on merits.

7. The Refusal of petition can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. Hence, this Court has taken the lenient view in order to give opportunity to the Petitioner to establish his case in this Suit & to dispose of the Suit on merits, and accordingly, this Court is inclined to allow this petition on condition that the Petitioner shall extent his full co-operation with the Suit proceedings without any deviation in future.

8. For the reasons stated above, this Court is inclined to condone the delay of 72 days in filing the petition to restore the Suit which was dismissed for default on

26.07.2023 in the above O.S.No. 33 of 2021. Accordingly, the Point is answered in favour of the Petitioner.

9. **Result:-**

In fine, in the interest of justice, this petition is allowed with condition that the Petitioner/Plaintiff shall extent his full co-operation with the Suit proceedings without any deviation in future. No costs.

-//This Order is directly typed by me in my Laptop, and after rectification taken Printout and pronounced by me in the Open Court, on this the 8<sup>th</sup> Day of April – 2025.//-

(Sd/-)..K.Venkatesan  
DISTRICT MUNSIF  
KATPADI

**Exhibits and Witnesses on both Side:** - NIL

(Sd/-)..K.Venkatesan  
DISTRICT MUNSIF  
KATPADI