

IN THE COURT OF THE MUNSIF, KOCHI**Present:****Sri. Nishad Ibrahim., Principal Munsiff**Tuesday, the 29th day of July, 2025/07th Sravana, 1947.**I.A No.09/2024 in O.S No.37/2020 & I.A No.10/2024 in O.S No.37/2020****I.A No.09/2024 in O.S No.37/2020****Petitioner/ 1st Defendant:-**

	Muhammed Sanooj P.S., aged 30 years, S/o. P.H. Sainudheen, r/at C.C 2/838 A, C.P. Thodu, Pathyalthodu Desom, Fortkochi, Kochi Taluk, Pin – 682 001.
	By Advs. Sandeep V.G., Raieez M. Asharaf, Muhammed Ajeesh P.B. & Athira Uthaman

Respondents/Plaintiffs/Defendants:-

1.	P.H. Sidheeq, aged 68 years, S/o. Late Hamza, r/at House No. 13/1062, Muthaliyar Lane, Karuvelipady, Kochi – 682 005.
2.	P.H. Azeez, aged 54 years, S/o. Late Hamza, r/at Pullathuparambil House, House No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682 001, rep. by his P.O.A holder, Sahidha Azeez, aged 44 years, r/at Pullathuparambil House, House No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682 001.
3.	Sulekha P.H., D/o. Hamza, W/o. M.B. Ummer, House No. 3/824, Moideenka House, Nelukadavu, Near Masjid Bay, Fortkochi Kochi – 682001.
4.	Sheeja Ashkar, aged 43 years, W/o. Late Ashkar, House, No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682 001.
5.	Ruksana, aged 22 years, D/o. Late Ashkar, House No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682001.
6.	Rubeena, aged 18 years, D/o. Late Ashkar, House No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682 001.

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| 7. | P.H. Salim, aged 57 years, S/o. Late Hamza, Pullothuparambil House, Malippuram, Vypin. |
| 8. | Kochi Co-operative Society Ltd., rep. by its Secretary, Lalan Road, Mattancherry, Kochi – 682002. |

**R1 to R6 by Advs. Sathis Babu, Nimmi Joseph
R8 by Adv. P.P. Raphaelkutty & P.R. Thomachan
R7 No Vakalath**

I.A No.10/2024 in O.S No.37/2020

Petitioner/ 1st Defendant:-

	Muhammed Sanooj P.S., aged 30 years, S/o. P.H. Sainudheen, r/at C.C 2/838 A, C.P. Thodu, Pathyalthodu Desom, Fortkochi, Kochi Taluk, Pin – 682 001.
	By Advs. Sandeep V.G., Raieez M. Asharaf, Muhammed Ajeesh P.B. & Athira Uthaman

Respondents/Plaintiffs/Defendants:-

1.	P.H. Sidheeq, aged 68 years, S/o. Late Hamza, r/at House No. 13/1062, Muthaliyar Lane, Karuvelipady, Kochi – 682005.
2.	P.H. Azeez, aged 54 years, S/o. Late Hamza, r/at Pullathuparambil House, House No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682 001, rep. by his P.O.A holder Sahidha Azeez, aged 44 years, r/at Pullathuparambil House, House No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682001.
3.	Sulekha P.H., D/o. Hamza, W/o. M.B. Ummer, House No. 3/824, Moideenka House, Nelukadavu, Near Masjid Bay, Fortkochi Kochi – 682001.
4.	Sheeja Ashkar, aged 43 years, W/o. Late Ashkar, House, No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682 001.
5.	Ruksana, aged 22 years, D/o. Late Ashkar, House No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682 001.
6.	Rubeena, aged 18 years, D/o. Late Ashkar, House No. 3/212, Eraveli Colony, Fortkochi, Kochi – 682 001.

7. P.H. Salim, aged 57 years, S/o. Late Hamza, Pullothuparambil House, Malippuram, Vypin.
8. Kochi Co-operative Society Ltd., rep. by its Secretary, Lalan Road, Mattancherry, Kochi – 682002.

**R1 to R6 by Advs. Sathis Babu, Nimmi Joseph
R8 by Adv. P.P. Raphaelkutty & P.R. Thomachan
R7 No Vakalath**

These petitions having been heard on 19.07.2025 and the court on 29.07.2025, passed the following:-

C O M M O N O R D E R

I.A. No. 9/2024 filed by the petitioner/1st defendant u/s. 5 of the Limitation Act seeking condonation of 534 day's delay in filing the petition to set aside the exparte decree dated 06.03.2023. I.A. No.10/2024 filed under Order IX Rule 13 and S. 151 CPC to restore the suit to file.

2. **The petition summary in I.A. No.9/2024 :** a) The suit was for partition, declaration, and injunction. The petitioner actively contested the case, entrusting it to Adv.Muhammed Shameem on 15.02.2020, who entered appearance and filed vakalath. The petitioner left India on 18.02.2020 but stayed in touch with his counsel. On 17.02.2022, during a visit to the advocate's office, he was again assured that representation would be made as needed. In March 2024, amid a family dispute, the petitioner tried contacting the counsel, who was unresponsive. On visiting his office at Convent Junction, Ernakulam, he found it closed. On 22.03.2024, the advocate finally informed him that his office was moved to Kombara Junction near the High Court, and that the suit was decreed ex parte on 06.03.2023. The petitioner then obtained

the case file and discovered that no proper representation was made or written statement had been filed.

b) On 25.05.2024, the petitioner engaged Adv. Dilish K. John to file a petition to set aside the ex parte decree. The advocate filed I.A. Nos.6/2024 and 7/2024. On 21.07.2024, the petitioner was informed about I.A. No. 8/2024 filed by the plaintiff to produce his passport, which was allowed on 09.07.2024. The advocate then expressed unwillingness to continue and relinquished the vakalath. On 22.07.2024, new counsel entered appearance and, after reviewing the case file, advised that I.A. Nos.6/2024 and 7/2024 were vague and deficient, and recommended fresh petitions. It was only on 22.03.2024 that the petitioner became aware of the exparte decree, prompting immediate steps. The initial petitions, however, were flawed, which he realized only after engaging new counsel. There was no willful negligence or delay on the petitioner's part. The limitation to file the petition expired on 05.04.2023. The delay of 534 days was due to the above circumstances and is not attributable to any intentional default.

3. **Counter statement by 1st respondent /1st plaintiff :** The claim that the petitioner was actively contesting the case is false. The records show lack of interest. The petitioner's assertion regarding entrustment of his case to Adv. Muhammed Shameem on 15.02.2020 needs proof. The counsel entered appearance on 04.03.2020, the first hearing date, and represented the petitioner

on three postings seeking time to file a written statement. On 23.03.2021, due to non-representation, the Court issued notice to the counsel. Despite the statutory limits, the Court allowed time until 07.01.2022. The petitioner could have executed a power of attorney to pursue the case.

b) As per the affidavit, the petitioner returned from Qatar and claims to have contacted the counsel on 17.02.2022 but only reached him on 22.03.2024 - a delay of over two years. This indicates clear negligence. The claim of shifting offices is fabricated. The case was repeatedly adjourned from 07.01.2022 to 06.03.2023 for the plaintiff's evidence. On 05.08.2022, the Court ordered the plaintiff to serve copies of proof affidavit to the defendants, which was complied with. On 31.08.2022, the defendants were declared ex parte, and the case proceeded accordingly. Even while the petitioner was in Kochi, he failed to follow up. The timeline shows that his inaction, not the counsel's, led to the ex parte decree. The petitioner claims knowledge of the ex parte decree on 22.03.2024 but filed I.A. Nos.6/2024 and 7/2024 on 20.05.2024. These petitions were vague and lacked essential details. The Court had granted ample time to the petitioner. Blaming successive counsels reflects his own negligence and lack of communication, which ultimately led to the decree. Even after the decree, the petitioner appointed his present counsel only on 22.08.2024, a month after previous counsel withdrew. The petitioner continues to blame advocates rather than acknowledge his own

failure to provide instructions or pursue the case. The reasons cited for delay are vague and unconvincing. The delay reflects consistent negligence on his part.

4. IA No.10/2024 - Petition filed by the petitioner/1st defendant under Order IX Rule 13 and S. 151 of CPC to restore the suit in file with more or less same contentions as in IA 9/2024.

5. The respondents filed counter with more or less the same contentions in their counter filed in IA 9/2024.

6. **The following points arise for consideration:-**

(i) Whether the petitions are allowable ?

(ii) Reliefs and Costs ?

7. Heard both sides.

8. **Point nos.(i) and (ii) :** According to the petitioner, he was keenly contesting the case. He had entrusted the case with Adv. Mohammed Shameem on 15.02.2020 and left India on 18.02.2020. On 17.02.2022, when he returned from Qatar, he made enquiries with the lawyer who told him that he was always appearing before the Court. On 22.03.2024, when he contacted his counsel, the counsel told him that the above case was decreed exparte on 06.03.2023. On verification of the petition, he understood that the counsel was not properly attending his case. On 25.05.2024, he engaged another

counsel and subsequently that counsel also relinquished his vakalath. Thereafter on 22.07.2024, the petitioner engaged another counsel and after verification of the case file entrusted him to withdraw IA 6/2024 and 7/2024 which were filed on 25.05.2024 by his previous counsel. According to the petitioner, it was only on 22.03.2024, he came to know about the exparte decree passed against him. The petitioner claimed that there was no willful laches or negligence on his part in the delay caused in filing the petition to set aside the exparte decree.

9. On the other hand, the respondents/plaintiffs opposed the petition stating that the petitioner was not at all interested in contesting the case. The respondents also contented that the claim of the petitioner that he had left India to Qatar on 18.02.2020 has to be proved by the petitioner. The petitioner had not enquired about his case to the first counsel after entrusting the case on 15.02.2020 and he never went to the office of the counsel. It was claimed by the petitioner that after he returned from Qatar on 17.02.2022, he succeeded in contacting the counsel on 22.03.2024 ie., after lapse of 2 years and one month. This shows the negligence and laches of the petitioner in contesting the case. The petitioner is always finding fault with his earlier counsels. Since there was gross negligence on the part of the petitioner, the petitions are liable to be dismissed.

10. According to the petitioner, there was a delay of 534 days in filing the petition to set aside the exparte decree dated 06.03.2023. In pursuance of

the orders in IA 8/2024, the petitioner had produced his passport before the Court. As per the same, it is seen that he had departed from the Cochin International Airport on 18.02.2020 and had arrived at Cochin International Airport on 17.02.2022 which would prima facie substantiate his claim that after entrusting his case to the counsel on 15.02.2020, he had left India. At the same time, it is pertinent to note that he has no plausible explanations as to why he had not contacted his counsel or enquired about the stage of his case from 17.02.2022 till 22.03.2024. It may be noted that an exparte decree was passed in the above case on 06.03.2023. Though he claimed that on 22.03.2024, he contacted his first counsel and understood that his counsel was not properly attending his case, he engaged another counsel only on 25.05.2024. He has no explanation as to the said delay also.

11. In the unreported decision in **K.K. Jyothidarshan v. Vannakandy Anil (2023 ICO 917, FAO No. 20 of 2023)**, a Division Bench of the Hon'ble High Court of Kerala held that when there was inordinate delay, the doctrine of prejudice was attracted and that strict approach in the matter of condonation of delay was required.

12. From the above discussion, I am of the view that that the petitioner could not show any sufficient reason to condone the delay in filing the petition to set aside the exparte decree. Accordingly, these points are found against the petitioner. I find no reason to deviate from the normal rule that costs shall follow the event.

In the result,

1. The petitions are dismissed.
2. The petitioner is directed to pay the costs of the petitions to the respondents/plaintiffs.

Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open court on this the 29th day of July, 2025.

**Sd/-
Nishad Ibrahim
Principal Munsiff**

APPENDIX:- Nil

**Id/-
Principal Munsiff**

/// True Copy ///

Principal Munsiff

**Common Order in
I.A No.09/2024 & 10/24 in
O.S No.37/2020
Dtd: 29.07.2025**