

IN THE COURT OF THE SUBORDINATE JUDGE, DEVIKULAM

Present: Sri. Balram M.K, Sub Judge.

On Tuesday, the 16th day of June 2026/26th day of Jyaishta, 1948

I.A No. 3/2025

IN

O. S. No. 5/2025

Petitioner/Defendant:-

Jayaneesh, aged 42 years, S/o. George Varghese, Residing at Vattolil House,
Mettakil Kara in Parathodu Village of Udumbanchola Taluk.

By Adv. Sri. Johnson Peter

Respondents/Plaintiffs:-

1. Anand Mathew, aged about 30 years, S/o. Mathew Varghese, Residing at Vattolil House, Parathodu Village of Udumbanchola Taluk.
2. Abhijith Mathew, aged 27 years, S/o. Mathew Varghese, Residing at Vattolil House, Parathodu Village of Udumbanchola Taluk.

By Adv. Sri. N.C.Rajesh

This petition filed under Order IX Rule 13 of the CPC.

This petition coming on for hearing before me on 16.06.2026 in the presence of
above counsels and the court on the same day passed the following:-

ORDER

This is an application filed to set aside the exparte decree in OS 5/2025 dated 26.06.2025.

2. The averments in the petition in brief are as follows :- The case was posted for the appearance of the petitioner on 07.03.2025. But unfortunately on 05.03.2025, the petitioner fell ill due to acute and severe back pain due to lumbar intervertebral disc prolapse. The petitioner was undergoing treatment in Arpana Hospital, Thookkupalam with strict directions to undergo complete rest. The petitioner was under rest and treatment till 20.11.2025 and hence, could not appear before the court on 07.03.2025 and on subsequent days. The petitioner came to know about the decree only on 24.11.2025 and the absence of petitioner before the court was not deliberate and willful. The petitioner has a very serious case to contest. Hence, the application filed to set aside the exparte decree.

3. The respondent filed objection. Averments in the objection in brief are as follows :- There is no sufficient cause mentioned in the petition filed by the petitioner. The petitioner is well aware of the pendency of the case before this court and he deliberately failed to appear and contest the case. The medical certificate produced by the petitioner is dated 25.11.2025. But from the certificate, it can be seen that he is under treatment since 05.03.2025 and yet he failed to produce medical records since then. A general sweeping statement claiming medical illness without precise diagnostic histories, admission records or genuine clinical proofs does not satisfy the criteria. The petition has to be dismissed with exemplary costs.

4. Heard both sides in detail.

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

(1) Whether the petition is liable to be allowed ?

(2) Reliefs and costs ?

6. Point No.1 :-

Originally the suit was filed for specific performance of agreement and said suit was decreed on 26.05.2025 and the plaintiffs preferred an application under Section 28 (3) of Specific Relief Act as IA No.2/2025 and the same is pending before this court. It is at this juncture that the defendant filed an application to set aside ex parte decree as IA No.3/2025. Since there was a delay in preferring IA No.3/2025, the petitioner preferred an application as IA No.4/2025 to condone the delay of 134 days and the said application is already allowed. The reason mentioned in the present application is that he was suffering from severe back pain due to lumbar intervertebral disc prolapse. A medical certificate is also produced along with the application. During the arguments stage, both sides submitted that the matter is almost settled between the parties. Considering the submission of both sides and also considering the averments in the affidavit, I am of the view that the petitioner has properly explained the reason for his absence before the court. Even medical certificate is also produced to substantiate his contention. Considering all these aspects, I am of the view that an opportunity has to be given to the petitioner for meeting his case on merit. In the circumstances, I am of the view that this application is liable to be allowed. This point is answered in favour of the petitioner.

7. Point No.2 :-

In the light of decision on point No.1, this application is liable to be allowed.

In the result, the application is allowed. Exparte decree in OS 5/2025 dated 26.06.2025 is hereby set aside.

(Dictated to the Adalat AI dictation software, corrected and pronounced in the open court on this the 16th day of June, 2026.)

BALRAM M.K
SUB JUDGE

APPENDIX
NIL

BALRAM M.K
SUB JUDGE