

IN THE COURT OF THE SUBORDINATE JUDGE OF VADAKARA

Present: Sri. Joji Thomas, Sub Judge
Tuesday, the 31st day of March, 2026

Common Order in IA (set aside ex-parte decree) 01/2026
and IA 01/2026 in OS 06/2023

IA (set aside ex-parte decree) 01/2026;

Between:-

Parambath Hameed,
S/o Abdulla, Aged 34 years,
Thayyullathil House, Chekkiad Village,
Thanikkottur desom, Thanikkottur Post,
PIN-673 505, Vatkara Taluk, Kozhikode District.

} Petitioner/Defendant

And:

Ismail,
S/o Kunnath Ammad, Aged 55 years,
Vadakkayil House, Tuneri Village, Tuneri Desom,
Tuneri Post, PIN- 673 505, Vatakara Taluk,
Kozhikode District.

} Respondent/Plaintiff

Represented by Power of Attorney holder
Raheesa Ismail, W/o Ismail, Aged 50 years,
Vadakkayil Meethal House, Tuneri Village,
Tuneri desom, Tuneri Post.

IA 01/2026;

Between:-

Parambath Hameed,
S/o Abdulla, Aged 34 years,
Thayyullathil House, Chekkiad Village,
Thanikkottur desom, Thanikkottur Post,
PIN-673 505, Vatkara Taluk, Kozhikode District.

} Petitioner/Defendant

And:

Ismail,
S/o Kunnath Ammad, Aged 55 years,
Vadakkayil House, Tuneri Village, Tuneri Desom,
Tuneri Post, PIN- 673 505, Vatakara Taluk,
Kozhikode District.

} Respondent/Plaintiff

Represented by Power of Attorney holder
Raheesa Ismail, W/o Ismail, Aged 50 years,
Vadakkayil Meethal House, Tuneri Village,
Tuneri desom, Tuneri Post.

} Respondent/Plaintiff

These petitions are coming on the 24th day of March, 2026 for final hearing before me in the presence of Sri. K.P. Pradeepan, Advocate for Petitioner and of Sri. P.A. Jaleel, Advocate for Respondent and having stood over to this day for consideration, the Court passed the following:

ORDER

I.A (set aside ex-parte decree) 1 of 2026 is filed by the defendant under Order 9 Rule 13 of Code of Civil Procedure, 1908 (hereinafter in short as CPC) to set aside the ex-parte decree dated 20.03.2025.

I.A. 01 of 2026 is filed to condone the delay of 257 days in filing application to set aside the ex-parte decree dated 20.03.2025.

2. The contentions of the petitioners in both these applications are as follows:- The petitioner is the defendant in the suit. The petitioner was set ex-parte and ex-parte decree was passed on 20.03.2025. The present case was listed for trial on 12.03.2025 but he was held up in Dubai in connection with his business. When it was informed that mediation is fixed on 02.10.2024, he was ready to attend the mediation. However, he could not fly from Dubai due to travel ban from the side of sponsor as there was arrears of rent. On 17.03.2025, his father got severe heart attack and with the help of Malayalees at Dubai, he could reach home after clearing of the dues with his sponsor. The father was admitted at Iqraa Hospital, Kozhikode and declared dead on

25.07.2025. Thereafter, he left for Dubai after post demise ceremony. On 23.12.2025, when he contacted his counsel, it was revealed that ex-parte decree was passed on 20.03.2025 and got information that execution proceedings is also pending. There are no willful laches or default on his part for non appearance on the listed day. The petitioner has a good case to contest. If the ex-parte decree is not set aside irreparable loss, injury and hardships caused to the petitioner. For these reasons, there happened to be delay of 257 days in presenting the application to set aside ex-parte decree. Hence, these applications.

3. The respondent filed counter affidavit in both these applications with following contentions:- The petitioner has not produced any materials to establish that he has travel ban in connection with money due to his sponsor. He has not produced his passport or any other records to establish the said facts. The petitioner though was present at native when the case was listed for trial, he has not taken any steps to remove the case from the list. He has not produced any materials to establish his contentions in the case. If the ex-parte decree is set aside, irreparable loss and hardships caused to the respondent. Hence, seeks to dismiss these applications.

4. The petitioner was examined as PW1. Ext.A1 to A8 were marked. No evidence is adduced from the side of respondent.

5. Heard both sides. Perused the records.

6. The following points are raised for consideration:-

- 1) Did the petitioner present sufficient cause to set aside the ex-parte decree dated 20.03.2025 ?
- 2) Did the petitioner show sufficient cause to condone the delay of 257 days?

3) What is the proper order?

7. **Points No.1 and 2:-** The learned counsel for the petitioner submitted that ex-parte decree against the petitioner may be set aside and allow him to contest the suit on merits. He pointed out that due to travel ban, the petitioner could not attend the Court when case was listed for trial. The learned counsel appearing for the respondent submitted that though the case was referred for mediation, the petitioner did not appear before the mediation center. According to the counsel, the petitioner has willfully not participated in the trial and the present applications are only an attempt to protract the proceedings.

8. The petitioner was examined as PW1 and Ext.A1 to A8 are marked. Ext.A1 is the copy of passport of the petitioner. Ext.A2 is the copy of flight ticket dated 02.10.2024 from Abudabi to Kannur. Ext.A3 is the medical summary of Kunhabdulla, issued from Iquraa Hospital Kozhikode. Ext.A4 series are the medical bills. Ext.A5 is the death certificate of Kunhabudlla, who died on 25.07.2025. Ext.A6 dated 20.03.2025 is the receipt evidencing deposit of Rs.10,00,000/- in favour of building owner. Ext.A7 dated 08.04.2025 is the receipt evidencing deposit of Rs.10,00,000/- in favour of building owner. Ext.A8 is the debt cleared document issued from Government of Ajman. According to PW1, he has travel ban as rent of building wherein he was running business went on arrears and payment could be made towards the amount due on 20.03.2025 and 08.04.2025 alone. Ext.A8 would show that he was issued with debt clearance document only on 16.04.2025. Therefore it is clear that he could travel from Dubai only after 16.04.2025.

9. Admittedly, ex-parte decree passed on 20.03.2025. The petitioner has no case that summons was not served on him. He has filed written statement and case was listed for trial. The B-diary would reveal that case was listed for trial on 05.03.2025 and on application, it was adjourned to 12.03.2025. The B-diary on 12.03.2025 indicates that there was submission on the side of defendant counsel that defendant did not turn up. It may be true that he has travel ban on the said day. However, present application to set aside ex-parte decree is filed only on 16.01.2026. Admittedly, there is a delay of 257 days in filing application to set aside ex-parte decree. It appears that these applications are filed after receipt of notice in execution proceedings. Even going by the case of petitioner, he has contacted his counsel only on 23.12.2025 after ex-parte decree was passed on 20.03.2025. In fact, there is no explanation as to while he omitted to contact his counsel till 23.12.2025. In any case, the laches on the part of petitioner in prosecuting the matter is clearly evident. However, it is always better to have a decision on merit rather than on ex-parte. Moreover, in *Union of India vs. Ramcharan* reported in AIR 1964 SC 215, the Apex Court has held that while considering the sufficiency of cause for setting aside ex-parte decree, courts should not be extremely strict and a liberal approach is essential to do substantial justice between the parties. Going by this decision and considering the facts brought in before the Court, it is only just and proper to find that the petitioner could show sufficient cause to set aside ex-parte decree dated 20.03.2025 by condoning the delay of 257 days. Accordingly point no.1 and 2 are found in favour of the petitioner.

10. **Point No.3**:- In the light of the finding in point No.1 and 2, these applications are to be allowed. However, considering the inconvenience caused to the

respondent, I am inclined to impose conditions. Accordingly, these applications allowed on condition to pay costs of Rs.10,000/- to the respondent on or before 19.05.2026.

In the result, these applications are allowed. The delay of 257 days is condoned and the ex-parte decree dated 20.03.2025 is set aside on condition to pay costs of Rs.10,000/- to the respondent on or before 19.05.2026. The petitioner shall pay costs of Rs.10,000/- to the respondent on or before 19.05.2026 and file memo.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open Court on this the 31st day of March, 2026.

Sd/-
SUB-JUDGE,
VATAKARA.

Petitioner's Witnesses:

PW1 17.03.2026 : Hameed Parambath, S/o Kunhabdulla

Petitioner's Exhibits:

A1	28.02.2022	:	Photo copy of Passport No. Z5939551 in respect of Hameed
A2	01.10.2024	:	Copy of Air ticket confirmation in respect of Hameed Parambath
A3	09.04.2025	:	Copy of Medical summary issued by Dr. Faris Hussain of IQRAA International Hospital and research centre in respect of Mr. Kunhabdulla
A4	18.03.2025	:	Copy of discharge bill in respect of Kunhabdulla issued from IQRAA International Hospital and Research Centre, Kozhikode
A5	24.10.2025	:	Copy of death certificate in respect of Kunhabdulla issued by Kozhikode Municipal Corporation
A6	20.03.2026	:	Copy of receipt for deposit amount Rs. 40000/- in Sharjah Islamic Bank in respect of Abdulla Obaid Khalfan.M

- A7 08.04.2025 : Copy of receipt for deposit amount Rs. 40000/- in
Sharjah Islamic Bank in respect of Abdulla Obaid
Khalfan.M
- A8 16.04.2025 : Debt clearance document issued from Govt. of Ajman

Respondent's Witnesses and Exhibits : NIL

Court Witnesses and Exhibits : NIL

Sd/-
SUB-JUDGE,
VATAKARA.

Fair/copy of Order in
IA (set aside ex-parte decree) 1/26 &
IA 1/26 in OS 6/2023 Dated: 31/03/2026