

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge
Madurantakam**

**Wednesday, this 08th day of October 2025
I.A.No. 329/2018
in
O.S No. 52/2012
(CNR No. TNCG13000274-2012)**

1. Sundara Achari (Died)
(Amended as per order in I.A 4/2022 dated 21.09.2023)
2. Veerabathiran
3. Vijayagandeeban
4. Alamelu
5. Deivayanai
6. Dillikumar (Died)
(Amended as per order in I.A 5/2025 dated: 31.01.2025)

...Petitioners/Defendants 2 to 6

..Vs..

Murugan

...Respondent/Plaintiff

This petition coming up for final hearing on 10.09.2025 in the presence of M/s.K.Ayyasamy and S.Jothi, counsels for the petitioners/defendants and Mr.S.Subramanian, counsel for respondent/plaintiff and after hearing the arguments on both sides and upon perusing the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioners under Order IX Rule 13 and Section 151 of Civil Procedure Code to set aside the exparte dated 06.11.2013 and receive the Written Statement of petitioners for disposal of suit on merits.

2. Averments of the petitioner:

The petitioner is the 1st defendant in the above suit. Petitioner engaged counsel to defend the above suit. Petitioner counsel filed vakalat and took adjournment for filing written statement. The above suit was posted to 03.09.2013 for filing written statement and for filing counter in the injunction application I.A No. 248/2012. But from the last week of August 2013 petitioner was suffering from jaundice and taking native treatment in the village and could not move from petitioner's house and give instructions to petitioner's counsel to file written statement in the above suit and counter to the said injunction petition. Only today petitioner recovered fully and meet his counsel and understood that petitioner was set exparte for non filing of written statement in the above suit and non filing counter in the injunction petition I.A No. 248/2012. Petitioner understand from his counsel that the above suit was decreed exparte on 06.11.2013. Petitioner also understand that injunction petition was allowed on 03.09.2013. Non filing of written statement in the above suit and counter in the injunction petition are due to petitioner illness mentioned above. Exparte decree dated 06.11.2013 passed in the above suit be set aside and receive the written statement of petition in the above suit. No prejudice is caused to other side in setting aside in the exparte decree for disposal on merits. The exparte order dated 03.09.2013 passed in the injunction petition be set aside the counter of petitioner to the injunction petition be received.

That there is delay in filing petition to set aside the exparte order dated 03.09.2013 in the injunction petition I.A No. 248/2012. The delay is due to his continued illness mentioned above. Hence, petitioner pray that the delay may be condoned. The delay is neither willful nor wanton. Hence petition files this petition for set aside the exparte decree dated 06.11.2013 passed in the above suit.

3. Counter of the Respondent in brief:

The respondent denies the allegations set out in the affidavit. Originally the respondent/plaintiff filed the suit against this petition/defendant. Defendant also engaged counsel filing vakalath on 03.08.2012. Petitioner got 15 adjournments for filing written statement. Despite he failed to file written statement and hence this court was pleased to passed exparte decree and judgment on 06.11.2013. Respondent filed final decree application in I.A No. 67/2017 and also issued notice to the petitioner. After enquiry this court was pleased to appoin an advocate commissioner to divide the suit properties.

The learned commissioner also filed his report. All the above said proceedings are well aware of the petitioner. The petitioner filed this application on 29.11.2013 but this application numbered in the year 2018. More than 5 years the petitioner have not taken any steps to early number this application. The non filing of written statement reason is due to petitioner illness. But the petitioner not produced any medical records. There is no sufficient reasons stated in the affidavit to condone the delay of 57 days along with numbering delay of more than 5 years and each and every delay is not properly explained. The delay is willful nor wanton. There is no bonafide reason or merits in the petition. Hence this petition is liable to be dismissed with cost.

4. No oral or documentary evidence adduced by both parties.
5. Heard both sides and perused the records.

6. Point:

“Whether this application can be allowed?”

This petition has been filed by the petitioner/1st defendant under Order IX Rule 13 and Section 151 of the Code of Civil Procedure, seeking to set aside the ex parte decree dated 06.11.2013 and to receive the written statement for disposal of the suit on merits.

The petitioner contends that though he had engaged counsel to defend the suit and a vakalat was filed, he was unable to give instructions to his counsel for preparing and filing the written statement as he was suffering from jaundice from the last week of August 2013 and was undergoing native treatment in his village. He claims that due to his illness, he could not move from his residence or communicate with his counsel. It is further stated that the petitioner came to know of the ex parte decree only upon his recovery, and that his absence was neither willful nor wanton. He therefore seeks to set aside the ex parte decree dated 06.11.2013 and to receive his written statement for adjudication on merits, contending that no prejudice would be caused to the respondent by allowing the petition.

The respondent/plaintiff, on the other hand, has filed a detailed counter opposing the petition. It is contended that the petitioner was granted sufficient opportunity to file his written statement and had taken about fifteen adjournments over a period of one year before being set ex parte. The respondent further points out that even after the ex parte decree, subsequent proceedings in the final decree application were actively participated in by the petitioner through counsel, thereby indicating his knowledge of the decree. It is further submitted that though the petition to

set aside the decree was filed in November 2013, it remained unnumbered for more than five years, and no explanation has been offered for the inordinate delay in prosecuting the same. The respondent also contends that the petitioner has not produced any medical evidence to substantiate his claim of illness and that there is no bona fide reason or sufficient cause shown to condone the delay.

Upon careful consideration of the rival submissions and the materials available on record, this Court finds that the petitioner's explanation for non-filing of the written statement rests solely on his alleged illness due to jaundice. However, except for the bare statement in the affidavit, no medical record or other material has been produced to substantiate the same. Further, the records reveal that the petitioner had been granted several adjournments prior to being set ex parte, which indicates that ample opportunity was afforded to him to file his written statement.

It is also seen that although the petitioner claims to have filed the present application in November 2013, it was taken on file only in 2018, and there is no satisfactory explanation for this prolonged delay in numbering the petition. Such indolence in prosecuting his remedy reflects a lack of diligence.

At the same time, it is well settled that the power under Order IX Rule 13 CPC should be exercised to advance substantial justice, provided the petitioner demonstrates bona fide reasons and absence of negligence. In the present case, while the petitioner has failed to produce material proof of his illness or explain the delay satisfactorily, outright dismissal of the petition would deprive him of an opportunity to contest the matter on merits. The balance of convenience, therefore, lies in affording one final

opportunity to the petitioner, subject to stringent terms to compensate the respondent for the hardship caused by the prolonged delay.

No loss or prejudice will be caused to the respondent if the suit decided on merits. Apart from that the petitioners have also filed their written statement along with this application, which shows their bonafideness. So, there is no bar to allow this application to meet the ends of justice. But for the lethargic attitude this court inclined to allow this application on conditions. Hence this point is decided accordingly.

7. Result:

In the result this application is allowed on conditions that,

(i) the petitioners shall pay a sum of Rs. 3,000.00 (Rupees Three Thousand) only as cost to the respondent on or before 16.10.2025 and if the petitioners fail to comply the above said conditions, then this application automatically stands dismissed. Call on 17.10.2025.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 08th day of October 2025.

Subordinate Judge,
Madurantakam.

Both sides evidence and Exhibits : Nil.

Subordinate Judge,
Madurantakam.

FAIR/DRAFT ORDER
I.A No. 329/2018
IN
O.S No. 52/2012
D.O.D: 08.10.2025
SUB COURT,
MADURANTAKAM