

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,  
PERAMBALUR, STATE OF TAMILNADU.

Present: Thiru.V.Padmanabhan, M.A., M.L., D.H.,  
Principal District Judge.

Thursday, this the 28<sup>th</sup> day of August, 2025.

I.A.No.6/2023  
in  
O.S.No.40/2018

Ranganathan, 41/23,  
S/o. Mallagoundar.

... Petitioner/1<sup>st</sup> Defendant.

- Vs -

The Branch Manager,  
State Bank of India,  
Perambalur Branch.

...Respondent/Plaintiff.

This petition is coming up for final hearing before me on 06.08.2025 in the presence of Thiru.M. Nallathambi, Advocate for the petitioner and Thiru.N. Srinivasa Murthy, Advocate for the respondent; upon perusing the petition, counter and documents and after hearing the arguments on both side, this Court has passed the following:

**ORDER**

The petition is filed under section 5 of Limitation Act and 151 of CPC to condone the delay of 5 days in filing the petition to set aside the exparte decree passed against the petitioner/1<sup>st</sup> defendant on 24.03.2023.

2. The brief averments of the affidavit appended to the petition are as follows:-

The petitioner is the 1<sup>st</sup> defendant in the main suit. The suit is filed by the respondent for recovery of money. On 24.03.2023, when the case was taken up for trial, he was not able to appear before the Court due to jaundice and he was set exparte. Thereafter, he came to know that he was set exparte through his counsel. Now he has come forward with this application to set aside the exparte decree. Hence, the petitioner has filed the petition with a delay of 5 days to set aside the exparte decree passed against him. The delay is neither willful nor wanton. If this petition is not allowed, he will be put to irreparable loss and hardship and if this petition is allowed, no prejudice will be caused to the respondent. Hence this petition.

3. The brief averments in the counter filed by the respondent/plaintiff is as follows:-

This petition is not at all maintainable either in law and on facts. All the averments stated in the affidavit except those that are specifically admitted herein by the respondent are all denied as false and the petitioner is liable to strict proof of the same. The petition has to be dismissed in limine with exemplary costs. The matter of condonation of delay, it is an established position that each and every day's delay has to be explained and a person who seeks the exercise of the discretion to condone the delay in their favour cannot run away by making a mere general statement or mere allegation unsupported by any document or mere passing of their latches upon their bald illness without any iota of truth and details regarding the illness and treatment took for the all along. The suit had filed by the plaintiff / respondent in the year 2018, the 1<sup>st</sup> defendant is the one of the borrower had filed his written statement in this suit, the 2<sup>nd</sup> defendant who is the mother of 1<sup>st</sup>

defendant and mother of 3 to 6 defendants in this suit. The 1<sup>st</sup> defendant obtained adjournments for filing his written statement from 09.11.2018 to 07.10.2020 nearly more than 2 years, then filed written statement. Pending suit, the 3 to 6 defendants / were impleaded as remaining L.Rs. of deceased 2<sup>nd</sup> defendant. They have not any specific case since the original borrower himself had filed his written statement, failed to contest the suit by way of cross examination, allowed to the suit to be decreed. Due to non filing of written statement by 4 to 6 defendants, they were set exparte. The 1 to 3 defendants had borrowed loan from plaintiff bank in the year 2009, failed to repay the same for more than 9 years, then only this respondent/plaintiff had filed this suit in the year 2018, even after appeared through counsel, filed his written statement, participate in the trial proceedings. There is no merits to allow this application. It is submitted that even though the days of delay was not material. But, the reasons has to be strong. It is however necessary to emphasize that even after sufficient cause has been shown a party is not entitled to condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by section 5 of the Limitation Act. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If this Court decided to provide an opportunity to the defendants / petitioners to participate in trial, this Court may pass an conditional order for deposit of half of the decree amount in this Court within a stipulated time for allowing this petition. Otherwise the respondent/plaintiff bank will cause irreparable loss and hardship. Hence, the petition may be dismissed with costs.

4. During the enquiry, no evidence was adduced and no documents were marked on both sides.

5. Point for consideration:-

Whether the petition has to be allowed or not as prayed for?

**Point:**

6. It is an admitted fact that the main suit is filed by the respondent as plaintiff against the defendants for recovery of money.

7. This petition is filed to condone the delay of 5 days in filing an application to set aside the exparte decree which was passed against him on 24.03.2023. In the affidavit filed by the petitioner it is stated that on 24.03.2023, he was suffering with jaundice and he was not able to attend the Court on that day. Therefore, according to the petitioner the failure to appear on 24.03.2023 is neither willful nor wanton.

8. The respondent contended that the Court has granted time to conduct the trial but the petitioner has not come forward to conduct trial. In each and every stage the petitioner is trying to drag on the proceedings.

9. The suit is filed based upon mortgage and the same was decreed on 24.03.2023 against the petitioner/1<sup>st</sup> defendant. But the petitioner has not filed the application to set aside the exparte decree in time. In this regard, the petitioner affirmed that he was ill health and was unable to file the petition in time and that there was 5 days delay. Admittedly, it is not a enormous delay. The said reason is quite natural and believable one. Considering the nature of main suit and with a view to give an opportunity to the petitioner/1<sup>st</sup> defendant to contest the suit on merits, this Court comes to the conclusion that this petition can be allowed on cost and the point is answered accordingly.

10. In the result, this petition is allowed subject to condition that the petitioner shall pay a cost of Rs.500/- to the respondent on or before 15.09.2025, failing which the petition shall stand dismissed. Call on 16.09.2025.

Dictated to the Executive Assistant, transcribed and typed by her in computer, corrected and pronounced by me in open Court, this the 28<sup>th</sup> day of August, 2025.

Principal District Judge,  
Perambalur.

Fair/Draft Order  
I.A.No.6/2023  
in  
O.S.No.40/2018  
D.D: 28.08.2025.