

returned petitions were mingled with some other case bundles in the advocate office of the petitioners and now only petitions were traced out. Thus, there is a 375 days delay in representing the petitions. The delay is neither willful nor wanton. Hence, the present petition to condone the delay in representing the petitions.

2. The counter filed by the respondent is as follows:

The respondent had denied the averments stated in the petition except that those are specifically admitted by him. The petitioners have filed vakalat on 04.06.2018 and thereafter several chances had been given to the petitioners for filing written statement. But, they have not filed written statement and thus, an ex parte order was passed against the petitioners on 04.09.2018. Subsequently, an ex parte decree was also passed against the petitioners on 03.10.2018. The reason stated by the petitioners for the delay is not correct and they cannot shift their bound duty to follow the case proceeding to their counsel. The respondent is the 90 years old women and in order to give trouble to the respondent the present suit has been filed. Hence, it is prayed for dismissal.

3. Now the point for consideration is:-

Whether this petition is liable to be allowed or not?

4. Answer to the Point:

This petition has been filed U/s. 151 of CPC to condone delay in representing the petitions filed by the petitioners to set aside the ex parte decree along with the delay condone petition. It is the contention of the petitioners that they have filed petition to set aside the ex parte decree along with the delay condone petition and the same were returned for defects. Subsequently, said petitions were mingled with the case bundle in the advocate office of the petitioners and now only the petitioners traced out the petitions and thus, the delay occasioned.

5. Per contra the respondent would contend that the petitioners have appeared through their counsel in the suit on 04.06.2018. But, they have not filed written statement in the suit. Therefore, an ex parte decree was passed against the petitioners and now in order to harass the 90 years old respondent the present petition has been filed.

6. Having regard to the rival submissions it is noted that the petitioners were set ex parte in the suit and ex parte decree has been passed on 03.10.2018. It is also noted that the petitioners have filed a petition to set aside the ex parte decree along with the petition U/s.5 of limitation Act to condone the delay. However, the said petitions were returned by this court on 05.01.2022 for the defects. It is true that there is a 375 days delay in representing the petitions which have been returned by this court. Nevertheless, the reasons stated by the petitioners for the delay are convincing and also in the interest of justice this petition his liable to be allowed. On the same time sufferance caused to the respondent also taken into consideration.

Finally, this petition is allowed subject to the payment of cost Rs.1000/- to the respondent on or before 22.01.2025 failing which this petition will be dismissed.

Dictated to the Steno Typist directly, computerized by her, corrected and pronounced by me in the open court on 02nd day of January 2025.

sd/- L. Kalaivani,

III Additional District Judge,
Salem.