

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHEYYAR

THIRUVANNAMALAI DISTRICT

Present :- **Tmt. K. Naleeni, B.com B.L (Hons), M.L.,**
Principal District Munsif, Cheyyar,
Thiruvannamalai.

Monday, the 07th day of July, 2025

I.A.No.02/2024 in O.S.No.82/2023

1. Elumalai
 2. Kanniyappan
- Petitioners/Defendants

V.

1. Murugammal
 2. Selvarani
 3. Shanthi
 4. Lakshmi
 5. Rajiv gandhi
- Respondents/Plaintiffs

This petition is coming before me on 01.07.2025 for final hearing in the presence of Thiru. T.P.Saravanan, learned Advocate for the Petitioners/Defendants and Thiru.D.Thangadurai, learned Advocate for the Respondents/ Plaintiffs and upon hearing both sides and after careful perusal of the entire case records and having stood over for consideration till this day, this Court delivered the following:

ORDER

This Petition has been filed under Section 5 of the Limitation Act, 1963 to condone the delay of 58 days in filing the set aside petition under Order IX Rule 13 of Code of Civil Procedure, 1908.

2. BRIEF AVERMENTS OF THE PETITION AS FOLLOWS:

The Second Petitioner is the Second Defendant in O.S. No. 82 of 2023. The present petition has been filed by the 2nd Petitioner/ Defendant on behalf of himself and the 1st Petitioner/Defendant. The petitioner states that upon service of summons, the suit was posted on 29.09.2023 for the appearance of Defendants 1 and 2. However, as both the defendants were suffering from ailments, they were unable to appear before the Court on the said date. He further submitted that as he has been confined to his residence, he was unable to communicate with counsel or attend Court proceedings. Consequently, both Petitioners were called absent and an ex-parte decree was passed against them on 24.11.2023.

The petitioner further states that the non-appearance of the Petitioners was neither willful nor deliberate but was solely due to the genuine and unavoidable circumstances stated above. Due to the said circumstances, the petition to set aside the ex-parte decree could not be filed within the statutory period, resulting in a delay of 58 days.

Hence, the present petition is filed under **Section 5 of the Limitation Act, 1963**, praying to condone the delay of 58 days in filing the petition to set aside the ex parte decree dated 24.11.2023 and consequently restore the suit to file, in the interests of justice.

3. BRIEF AVERMENTS OF THE COUNTER AS FOLLOWS:

The Respondents state that the petition filed by the Petitioner is false, vexatious, frivolous and is unsustainable either on question of law or on facts and is liable to be dismissed in limine.

The Petitioners/Defendants have filed this petition **without giving proper and valid reasons** for not appearing in the Court on the above said date of hearing. The respondents further state that the reasons stated by the

Petitioners for their non-appearance is false and that the 1st Petitioner is doing agricultural work everyday and both the petitioners/defendants are physically fit. The Respondent states that the petitioners/defendants willfully not appeared before the Court. The Petitioners/Defendants have filed this Petition only to waste the precious time of this Court.

The Respondent further states that the petitioner has not stated valid reason for condoning the delay in filing petition to set aside the exparte decree and that the **petitioners are bound to explain the delay for each and every day delay**. The Respondent further states that the petitioner has filed the application with ulterior motive of delaying the proceeding and that the petition filed is highly vexatious and malafide. He also further state that the Petitioners/Defendants have **not produced any medical records** to prove their allegations. Hence, he prayed to dismiss the petition with costs.

4. POINT FOR CONSIDERATION:

The sole point to be considered by this Court is whether the present petition can be allowed or not?

5. ORAL AND DOCUMENTARY EVIDENCE:

No oral or documentary evidence was adduced on both sides.

6. DETERMINATION:

Heard both sides and Records perused.

On perusal of the records, it is seen that the Petitioners are the Defendant in the OS. 82/2023 on the file of the Principal District Munsif, Cheyyar. The Respondents who are the Plaintiffs have filed the suit for declaration and Permanent Injunction against the Defendants. Upon service of

summons, the suit was posted on 29.09.2023 for the appearance of Defendants 1 and 2. However, as both the defendants were not present before the Court on the said date, they were set *ex parte* and consequently, the suit was decreed *ex parte* on 24.11.2023.

The present petition has been filed under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 58 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the *ex parte* decree passed and for restoration of the suit. The reason stated by the Petitioners for the delay is that owing to their own illness and their respective ailments they were not able to appear on the said date.

As per **Article 123 of the Limitation Act, 1963** an Application to set aside an *ex parte* decree is 30 days from the date of the decree. However, in the present case at hand, there was a delay of 58 days in filing the Application to set aside the *ex parte* decree under Order IX Rule 13. Hence, Application under Section 5 of the Limitation Act, 1963 has been filed to condone the delay in filing the setting aside petition under Order IX Rule 13 of Civil Procedure Code, 1908.

The Application to condone the delay can be admitted even after the expiry of 30 days provided **sufficient cause** has been shown for not making the application within such period. It's well settled law that Section 5 of the Limitation Act is to be **construed liberally** so as to advance substantial justice. It is necessary that if the delay is not deliberate, it ought to be condoned.

It is seen from the records that the Petitioners/defendants had not appeared due to their illness. However, this Court finds that, the Petitioners have not produced any medical records to prove their claim nor they have examined themselves in order to prove the said contentions. It is also to be noted that there are objections from the Respondents side in allowing this Petition on the grounds that each day delay have not been explained and that their non-appearance is willful and that the petitions are filed only with an intention to

delay the proceedings.

On careful perusal of both side contentions, this court sees that the Reasons stated by the Petitioner are found to be satisfactory. The petitioner has shown sufficient cause for condoning the delay. Therefore, in the interest of justice and to avoid multiplicity of proceedings, this Court finds that an opportunity ought to be given to the petitioner by condoning the delay to conduct their case. Therefore, this Court condones the delay of 58 days in filing the set aside petition on the above grounds.

Accordingly, the delay is condoned and the petition is hereby allowed.

7. RESULT :

In the result, this petition is hereby allowed.

Dictated by me to the Steno typist, directly typed by her, corrected and pronounced by me in open court, on this the 07th day of July, 2025.

(Sd/-K.Naleeni)

Principal District Munsif,
Cheyyar.

8. List of Witnesses:

On the side of the Petitioners : NIL

On the side of the Respondents : NIL

9. List of Documents :

On the side of the Petitioners : NIL

On the side of the Respondents : NIL

(Sd/-K.Naleeni)

Principal District Munsif,
Cheyyar.