

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHEYYAR

TIRUVANNAMALAI DISTRICT

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

Friday, the 01st day of August 2025

I.A.No.02/2024 and I.A 03/2024 in O.S.No.108/2023

Vijaya Kumar

... Petitioner/Defendant

V.

Banumathi

... Respondent/Plaintiff

This petition is coming before me on 17.07.2025 for final hearing in the presence of Thiru.P.Silambarasan, learned Advocate for the Petitioner and Thiru.A.Chanbasha, learned Advocate for the Respondent 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:

COMMON ORDER

i) IA 02/2024 :

This Petition has been filed under Section 5 of the Limitation Act, 1963 to **condone the delay** of 80 days in filing the set aside petition under Order IX Rule 13 of Code of Civil Procedure, 1908.

ii) IA 03/2024:

This Petition has been filed under Order IX Rule 13 of Code of Civil Procedure, 1908 to **set aside** the **Exparte Decree** passed on 23.02.2024 and to **restore** the suit in O.S.No.108/2023 on the file of this Court.

2. BRIEF AVERMENTS OF THE PETITIONS ARE AS FOLLOWS:

The Petitioner is the Defendant in O.S. No. 108 of 2023. The Suit was filed by the plaintiff for recovery of money, directing the defendant to pay the suit sum of Rs.85,833/- with subsequent interest at 24% p.a. and for costs. The petitioner states that, the suit was posted on 20.02.2024 for Appearance of Defendant/Written Statement/Further Proceedings. However, on the above said date the suit was set set exparte against the defendant for non-filing for Written Statement and consequently the Court has passed the exparte order on 23.02.2024 against the defendant. The petitioner further states that, even before the filing of the above suit and also during pending of the suit, the petitioner had severely affected by a colon disease and was undergoing treatment at the Senthilkumar Hospital in Kanchipuram and the Pollachi Government Hospital. In this situation, the petitioner's wife Padmavathy was also severely affected by heart disease and had been receiving treatment at JIPMER Hospital and Sasikumar Srini Hospital, Kanchipuram for more than 5 years till date. Due to this, the petitioner was forced to stay with his wife and take care of her. Hence, the petitioner was unable to appear in court on the said date. The petitioner further states that the non-appearance of the Petitioner 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 80 days.

Hence, the present petitions are filed under **Section 5 of the Limitation Act, 1963**, praying to condone the delay of 80 days in filing the petition to set aside and under **Order IX Rule 13 of the Code of Civil Procedure, 1908** to set aside the ex parte decree dated 23.02.2024 and consequently restore the suit to file, in the interests of justice.

3. BRIEF AVERMENTS OF THE COUNTER FILED BY THE RESPONDENT AND ADOPTED FOR COUNTER IN IA 3/2024 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 Respondent contends that, the petitioner was suffering from colon disease and his wife was suffering from heart disease, and that he was unable to file a Written Statement in the suit is not acceptable. Although the petitioner was given 90 days to file a Written Statement and the plaintiff was also examined, this court has not issued a exparte order but has given a fair decision in the suit. She also further states that the Petitioner/Defendant has not produced any medical records to prove his allegations, this petition should be dismissed. The petitioner has been continuously causing mental distress by using the fact that the respondent is an senior citizen, deaf and disabled woman. The petitioner has made unnecessary statements in the petition. Since she is an elderly woman, the petitioner has filed a Written Statement with a delay of 70 days after the judgment of the suit to delay in defrauding the loan received from her. The Respondent further states that, 90 days is the maximum for the circumstances mentioned in her Written Statement. The 71-day delay and the 90-day period do not disclose the details of what the petitioner has done for the suit. Therefore, the petitioner's petition should be dismissed as a petition that causes delaying the proceeding. Hence, she prayed to dismiss the petition with costs.

4. POINT FOR CONSIDERATION:

The sole point to be considered by this Court is whether the present petitions 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 Petitioner is the Defendant in O.S. No. 108 of 2023. The Suit was filed by the plaintiff for recovery of money, directing the defendant to pay the suit sum of Rs.85,833/- with subsequent interest at 24% p.a. and for costs. The petitioner states that, the suit was posted on 20.02.2024 for Appearance of Defendant/Written Statement/Further Proceedings. However, on the above said date the suit was set set exparte against the defendant for non-filing for Written Statement and consequently the Court has passed the exparte decree on 23.02.2024 against the defendant. The present petitions has been filed under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 80 days in filing the set aside petition and also under Order IX Rule 13 for restoration of the suit.

The reason stated by the Petitioner for the delay was that even before the filing of the above suit and also during pending of the suit, the petitioner had severely affected by a colon disease and the petitioner's wife Padmavathy was also severely affected by heart disease and had been receiving treatment for more than 5 years till date. Due to this, the petitioner was forced to stay with his wife and take care of her. Hence, the petitioner was unable to appear in court on the aforesaid date.

The present petition has been filed under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 80 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the exparte decree passed and for restoration of the suit. The reason stated by the Petitioner for the delay is that owing to his and his wife's illness and 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 80 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.

As per **Order IX Rule 13** of Code of Civil Procedure, 1908, an ex parte decree shall be set aside by the Court provided sufficient cause is shown by the defendant for his non- appearance. It is seen from the records that the Petitioner/Plaintiff had not appeared due to his own illness and also ill health of his wife. However, this Court finds that, the Petitioner has not produced any medical records to prove his claim nor he has examined himself in order to prove the said contentions. It is also to be noted that there are objections from the Respondent side in allowing this Petition on the grounds 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 and for his non-appearance. 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 and also by setting aside the ex parte decree passed and also to conduct

his case by allowing this petition. Therefore, this Court condones the delay of 80 days in filing the set aside petition on the above grounds. However, for the hardship caused to the Respondent and for not preferring this petition in a timely manner, this court is inclined to allow this petition with costs of Rs. 750/- on or before 04-08-2025.

Accordingly, the delay is condoned and the exparte decree dated 23.02.2024 is hereby set aside and the Original Suit in OS. No.108 of 2023 is restored to file.

7.RESULT :

In the result, both the petitions are hereby allowed on payment of costs of Rs. 750/- to the Respondent on or before 04-08-2025. For reporting compliance of order by 05-08-2025.

Dictated by me to the Steno typist, directly typed by her, corrected and pronounced by me in open court, on this the 01st day of August, 2025.

Principal District Munsif,
Cheyyar.

8. List of Witnesses:

On the side of the Petitioner : NIL
On the side of the Respondent : NIL

9. List of Documents :

On the side of the Petitioner : NIL
On the side of the Respondent : NIL

Principal District Munsif,
Cheyyar.