

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI**Present : Tmt. R.D. Gurulakshmi, M.A., M.L., P.G.D.I & C.L.,
District Munsif, Tiruttani.**Dated the Friday of 11th Day of July 2025

I.A.No.1/2025 in OS.No.60/2021

(CNR.No.TNTR21-000070-2021)

...

P. Madavaiah Naiu

...Petitioner / Defendant

/Versus/

P. Ramamurthy

... Respondent/ Plaintiff

This petition came up before me for the final hearing on 26.06.2025 in the presence of M/s. V.S. Velayudham, Advocate for Petitioner/Defendant, M/s.C.A. Natarajan, Advocates for Respondent/Plaintiff. Upon hearing both sides and having stood over for consideration till this day, this court delivered the following:

ORDER

This petition is filed by the petitioner under section 5 of Limitation Act to condone the delay of 239 days in filing the petition under order 9 rule 13 of CPC.

1. Petition averments in brief:-

(a) The Respondent/Plaintiff filed the suit for Permanent Injunction against the petitioner. The Petitioner's daughters who are settled at Bangalore and due Petitioner's illiterate, her daughters are look after the case. The petitioner engaged Advocate to defend her case. Due to Covid-19 the petitioner sick and affected lungs, other allied problems. The petitioner was bedridden for long period. The petitioner believed her daughters look after case. But they were failed to give suitable instruction to her counsel to file written statement.

(b) Due to non filing of written statement the court was passed and exparty decree on 26.04.2024. The non filing of written statement is neither willful nor wanton. The petitioner has good case and she got defence in the above suit to contest on merits, since the plaintiff filed the above suit with vexatious to grab the suit B schedule property. The respondent/plaintiff also constructed house and shops adjacent

to suit property with abutting Tiruttani to Nallatur main road. He is having access way to lead house and main road. But due to family dispute between the petitioner and respondent, he filed above suit to give troubles. The petitioner came to know about exparty decree only last week since the respondent trying to construct wall in the suit B schedule property.

(c) When the petitioner questioned him, he replied that he got decree against the petitioner and to raise wall in the suit B schedule property. The petitioner was timely resisted, but there is no such decree granted him. The respondent/plaintiff misusing the exparty decree and trying to grab the suit B schedule property. The respondent is proclaiming in the village that the suit B schedule property belongs to him and he raised wall in the same. Hence, this petition filed to condone the delay of 239 days in filing the petition to set aside the exparte decree passed on 26.04.2024. No prejudice will be caused to the respondent if this petition is allowed, otherwise the petitioner will be put into much loss and hardship. Hence this petition.

2. **Counter filed on behalf of the respondents in brief:-**

(a) This petition is not maintainable either in law or on facts. The allegations in para 2 of the affidavit are all not fully correct and denied. He was hale and healthy. He never went Bangalore at any point of time. All the allegations are figment of imagination. Daily the petitioner quarrelled with the respondent in his native place. It is true the suit was decreed on 26.04.2024. The allegations in para 3 of the affidavit are all false.

(b) The suit B schedule property is common to both for ingress and egress from main road to their houses and so the question of grab do not arise at all. The allegations in para 5 of the affidavit are all not fully correct and he filed petition to setaside exparty decree. There is no bonafide merits in this petition without proper season. Hence this petition is to be dismissed in limini with costs.

3. **Point for determination:-**

Whether the petitioner is entitled to the relief as prayed for? or not?

4. Heard both side. According to the petitioner, due to non filing of written

statement the exparty decree passed on 26.04.2024. The non filing of written statement is neither willful nor wanton. The petitioner has good case and she got defence in the above suit to contest on merits. Therefore petitioner prays to allow the petition. The Respondent resisted the petition by contending that the suit B schedule property is common to both for ingress and egress from main road to their houses and so the question of grab do not arise at all. There is no bonafide merits in this petition without proper season. Hence, prays to dismiss the petition with costs.

5. On perusal of records, in this case petitioner appeared on 01.10.2021 and posted for written statement on 29.10.2021. From 29.10.2021 to 28.10.2022 written statement not filed on the side of petitioner. In spite of sufficient opportunity given to petitioner/ defendant, petitioner not filed written statement, hence the petitioner was set exparty on 28.10.2022. No sufficient reason shown in this petition for the delay of 239 days. It is settled position of law on that lenient approach has to be taken in condonation of delay. Taking in to consideration, the petitioner is a senior citizen, this court is of view that in the interest of justice, to prevent multiplicity of proceedings, to provide the petitioner an opportunity to prove his case and for proper adjudication of this case, this petition has to be allowed on terms.

In the result, this petition is allowed on condition that the petitioner has to pay a cost of Rs.1000/- to the respondent on or before 18.07.2025 failing which this petition stands dismissed. Call on 18.07.2025.

Dictated to my Steno – Typist, typed by her directly in computer, corrected and pronounced by me in open court, this the 11th day of July 2025.

District Munsif,
Tiruttani.

Petitioner and Respondent's side Exhibits and Witnesses :- Nil

District Munsif,
Tiruttani.