

**In the Court of the Principal District and Sessions Judge,
Virudhunagar District at Srivilliputtur**

Present:- Thiru.K.Jeyakumar, B.L.,L.L.M.,

Principal District and Sessions Judge,

Monday, this the 3rd day of November 2025

I.A.No.04/2024

in

C.O.S.No.106/2018

M/s.R.K.Match Company (p) Ltd.,

Sivakasi,

Through its Managing Director,

G.S.Karthikeyan.

...Petitioner/Plaintiff

/Vs./

1.M/s.ESM Matches

through its Proprietor

Erulappan.

2.M/s.Sri Venkateswara Agencies

through its Proprietor,

Birram Venkateswara Rao,

3.M/s.Suresh Enterprises,

through its Proprietor

Suresh.

4.M/s.Bala Venkata Satyalakshmi,

General Merchant,

through its Proprietor,

Kolipakala Krishna Murali.

5.M/s.Sumana Enterprises,

through its Proprietor

Shankar paul .

... Respondents/Defendants

This petition coming before me for final hearing on 25.10.2025 in the presence of

Tr.M.Rajapandi, Advocate for the petitioner and Tr.K.Venkatesh Advocate for the 1st & 2nd

Respondents, other respondents set exparte, and upon hearing the arguments of both side and perusing the records, this Court delivered the following,

ORDER

The petitioner has filed this petition under section 5 of Limitation Act to condone the delay of 328 days for restore the dismissal of the suit.

Petition averments in brief:-

The petitioner has filed the suit against the defendants for the Perpetual injunction against the infringement and passing off of the trade mark 'Bulb' with green background. The suit has come on the hearing before this court on 04.07.2023 for filing steps for the amendment unfortunately, the petitioner has not attended the hearing and not filed steps due to illness. The petitioner has got eye operation on the both eyes, so that the petitioner has not able to attend the hearing of the suit for filing the steps, it is neither willful nor wanton, but it is act of god. Hence, the suit has been dismissed for not filing steps. The petitioner has to file the petition of condoning the delay within the time limitation, but unfortunately, the petitioner could not file the delay excuse petition in time. Now the petitioner has filed this petition to condone the delay of 328 days. Hence, this petition.

Counter averments in brief:-

3) The main suit is posted for steps for amendment. Even after several adjournments, the petitioner has not appeared in the court and not filed any steps. Hence, the court also dismissed the suit for default. Contra to the real facts the allegations contained in Para No.3 of the affidavit as if the petitioner has got eye operation and not able to attend the court is denied as false. If the petitioner had got eye operation then he would have stated the date and name of hospital in the affidavit. The petitioner herein with a view to drag on the

proceedings filed this vexatious petition. The petitioner has not disclosed the reason for each and every day delay. The petitioner has not stated in which date the suit was dismissed. The delay of 328 days are long and unexplained. It is just and necessary that this court may be pleased to dismiss the petition with cost.

4) Point for consideration is whether this petition has to be allowed or not?

Answer to point:-

5) Heard. It is learnt that the suit was filed by the plaintiff for perpetual injunction against defendants 1 to 5. Against this, the 1st defendant filed a written statement, which was adopted by defendants 2 and 4. In the meantime, the plaintiff filed a memo stating that the 5th defendant is not a necessary party to this suit and so the 5th defendant to be deleted. Accordingly, the 5th defendant shall be exonerated from this suit. For that the plaint had to be amended, and this Court fixed the hearing on 26.09.2019 for taking steps for amendment. Thereafter, I.A.No.1/2020 was filed for amendment under Section 10 of the CPC. After that, the plaintiff did not take any further steps to amend the plaint. Therefore, this Court ordered that the suit was dismissed for default on 04.07.2023. Now the petitioner has filed this petition to condone the delay of 328 days for restore the dismissal of the suit.

6) The petitioner contended that the suit was listed on 04.07.2023 for filing steps for amendment, but he was unable to attend the hearing and file the steps due to illness, as he had undergone eye operations on both eyes. Therefore, he was not able to attend the hearing for filing the steps. The petitioner ought to have filed this petition for condoning the delay within the prescribed time, but due to his medical condition, he could not file the delay condonation petition in time. Hence, he prays that this petition to be allowed.

7) Per contra, the 1st & 2nd respondents objected to allow the petition and stated that if the petitioner had undergone an eye operation, he would have mentioned the date and the

name of the hospital. Hence, the reason stated in the affidavit is false and not acceptable, and the petition has been filed only to protract the suit. They further contend that no valid reason has been stated for each day of the delay, and therefore the petition has no merit and may be dismissed with costs.

8) On perusal of the records, it is noted that there is a delay of nearly one year. The reason for the delay stated by the petitioner, who is aged 74 years, is that due to eye operations in both eyes, he could not contact his advocate in time, which caused the delay. Since the petitioner is 74 years of age, this court is of the view that there is a likelihood that he has undergone the eye surgery. However, the petitioner has not produced any medical documents regarding the surgery. In this litigation there is a delay of 322 days. Even so, this court thinks that is to be given an opportunity to him. Hence, this Court is of the opinion that the petition has to be allowed on costs. Therefore, this point is answered accordingly.

9) In the result, this petition is allowed on cost of Rs.5000/- to be paid by the petitioner to the 1st & 2nd respondents on or before 18.11.2025, failing which this petition shall stands dismissed. Call on 19.11.2025

Dictated to the Steno-Typist, directly typed by her, then corrected and pronounced by me in open Court on this the 03rd day of November 2025.

**Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputtur.**

List of witnesses and documents on both side:- NIL.

**Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputtur.**

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Order
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