

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE  
ARUPPUKOTTAI**

Present : **Thiru. M. VASANTHA KUMAR, M.L.,**  
Additional District Judge, Aruppukottai.

Saturday, the 06<sup>th</sup> day of June, 2026

**I.A. No. 04/2026 in O.S. No. 289/2025**

Panneerselvam ... Petitioner/Defendant.

//Vs//

Balasubiramanian ... Respondent/plaintiff.

This petition came up before me on 30.04.2026 for final hearing in the presence of Tmt. S. Pushpakala, Learned counsel for the Petitioner and Thiru. A. Muthumani, Learned counsel for the respondent and upon considering all material records in this case and hearing the arguments of both sides and having stood over till this day for consideration and this court delivered the following

**ORDER**

This is an application filed by the petitioner/defendant under Order 9 Rule 7 of C.P.C. seeking to set aside the exparte order passed against him on 09.02.2026 in the main suit.

2. **The Brief averments of the petition and affidavit is as follows**

The petitioner is the defendant in the suit. The suit was adjourned to 09.02.2026 for filing written statement on the side of defendant. Since the petitioner/respondent/defendant, did not appear before the court on that day and there was no representation on his side, an exparte order passed against the petitioner/respondent on that day. Non appearance of the petitioner/respondent is neither wilful nor wanton. Hence this petition.

3. The Brief averments of the counter filed by the respondent is as follows :

The averments that the suit was adjourned to 09.02.2026 for filing written statement on the side of defendant, since the petitioner/defendantrespondent did not appear before the court on that day and no representation was given on his side, an exparte order was passed against the petitioner/defendant are all denied as false. The petitioner/defendant has not stated any valid acceptable reason for non filing of written statement. In fact, sufficient opportunities were given to the petitioner to file a written statement, but however, after the lapse of more than 100 days, the petitioner has not filed his written statement and hence, an ex-parte order was passed against the petitioner on 09.02.2026. Furthermore, since the petitioner has filed this petition after 30 days, without filing a petition under Section 5 of Limitation Act, this petition is not maintainable. The petitioner has filed this petition only with an intention to prolong the case proceedings. Hence prays to dismiss the petition.

4. Point for Determination :

Whether this petition deserves to be allowed or not.

Heard the Counsels for both sides. Records perused. No Oral and Documentary evidence adduced by both sides.

5. By considering the rival submissions and by perusing the materials available on record, it found that since the petitioner had not filed his written statement on 09.02.2026, he has been called absent and set exparte on the same day. The suit is filed by the plaintiff for the relief of specific performance. Admittedly in this case exparte evidence was not taken. On the side of the petitioner, it is contended that the due to unavoidable circumstances, he was unable to appear before the court on 09.02.2026 and not filed the written statement. On the side of the respondents, it is contended that sufficient

opportunities were given to the petitioner to file a written statement, but however, after the lapse of more than 100 days, the petitioner has not filed his written statement and further without filing a petition under Section 5 of Limitation Act, this petition is not maintainable and this petition has been filed only with an intention to prolong the case proceedings and prays to dismiss the petition.

6. On perusal of records the suit is filed for the relief of Specific Performance. Admittedly in this case, trial has not yet been begin. An exparte order was passed against the petitioner/defendant on 09.02.2026. The present petition has been filed on 13.03.2026. This court is unable to accept the arguments advanced by the counsel for respondent/plaintiff for the reason that the suit is still pending. Only if the suit is disposed off and the set aside petition was filed beyond 30 days from the date of decree, then only the condone delay petition under Section 5 of Limitation Act to be filed. In this case such circumstances does not arise. More over, the petitioner/defendant has filed his written statement along with this petition. Hence this court is inclined to give an opportunity to the petitioner to defend the case. However the delay caused by the petitioner to the respondent has to be compensated by costs. Hence to effectively adjudicate the dispute among the parties and in the interest of justice and in order to give opportunity to the petitioner to conduct the suit on merits, this court is inclined to allow this application on condition by imposing costs.

7. In the result, this petition is allowed on condition that the petitioner has to pay a sum of Rs. 1000/- (Rupees One Thousand only) as cost to the respondent on or before 11.06.2026. For reporting compliance call on 12.06.2026.

Dictated by me to the steno-typist, directly typed by her, corrected and pronounced by me in open court, on this the 06<sup>th</sup> day of June, 2026.

Additional District Judge  
Aruppukottai.

List of Witness and Exhibits on the side of the Petitioner: Nil.

List of Witness and Exhibits on the side of the Respondent: Nil.

Additional District Judge  
Aruppukottai.