UPLOADED ON 27.04.2026

IN THE COURT OF PRINCIPAL COMMERCIAL COURT,
EGMORE, CHENNAI

Present: Thiru. S.GANAPATHISAMY, B.A.B.L.,
Principal Judge

Dated this 27th day of April 2026, Monday

I.A.No.1 / 2025 in C.O.S. No.471 / 2022

M/s. Alagu Agencies,
Represented by its Proprietor Mr.Velliappan,
178/G-2A, (766) G-2A,
Sakthi Tower II Anna Salai,
Chennai 600 002.
Also at
No.55, Annamalai Layout,
Erode – 638 011. Petitioner / Defendant

Vs

M/s. Chemoloeums India Private Limited,
Represented by its Managing Director,
Mr.S.Swaminathan,
Registered Office at T-3, Jains Annabelle,
No.3, 3rd Crescent Park Road,
Gandhi Nagar,
Adayar, Chennai – 600 020. Respondent/Plaintiff

This Petition coming on this day for final hearing on 17.02.2026 before me in the presence of M/s.Saurabh Mishra, K. Vinothioni and K. Sankar Vignesh, learned

counsel for petitioner/defendant: of M/s. T. Jurisman Fernando, learned counsel for the respondent/plaintiff and upon perusing the documents and hearing the arguments of respondent/plaintiff and having stood over for consideration till this day, this court today delivers the following:

ORDER

The Petitioner/ Defendant has come forward with this application under Section 5 of limitation Act seeking for condonation of delay of 831 days in taking steps to set aside exparte decree dated 14.03.2023.

The averments of affidavit filed in support of this application are shortly as follows:

1. The respondent / plaintiff had filed this main suit in OS No.1988/2017 on the file of V Assistant Judge, City Civil Court, Chennai for the recovery of suit claim of Rs.9,89,813.94 with interest. The defendant had filed his written statement and contested the proceedings. After examination of PW1, DW1 filed his proof affidavit marking Ex.B1 on 06.03.2018. The case was referred to Adhoc Court for recording evidence of DW1. The plaintiff did not choose to appear for cross examination of DW1 for a long time and its was sent back to regular Court. The regular Court closed the cross examination and posted the case for arguments. The suit was transferred to this Court on 23.04.2022 in view of dispute is commercial in nature. When the defendant approached the registry of this Court, he was informed that in view of large number of cases being transferred from City Civil Court and High Court, it will take time to number the suit and it will be notified about the transfer and next hearing

date. Only upon receipt of Court notice in Execution Petition, the defendant came to know about the Decree passed by this Court on 14.03.2023. When the defendant contacted his earlier counsel, he informed the defendant to have not received any communication and he is not aware of renumbering of the suit . Thereafter, the defendant came to know with the present counsel engaged by him that the new number was assigned as COS 471/2022 posting the matter on 10.06.2022 and the plaintiff changed his counsel on 23.11.2022 and this Court directed to plaintiff to issue notice to defendant by RPAD. As there was no representation on behalf of the defendant, the court posted the case for arguments and passed an exparte decree dated 14.03.2023 observing that as PW1 did not appear for cross examination, his evidence need not be taken into consideration drawing an adverse inference against the defendant. DW1 was always ready for cross examination and it is the plaintiff who failed to do the cross examination on DW1. The defendant is not aware of renumbering of the suit and within 30 days, the petitioner has filed this application. However he is advised to file an application to seek condonation of delay.

2. The respondent / plaintiff has resisted the application inter alia alleging that the decree passed by this court is not at all ex parte decree but contested decree on merits and nowhere in judgement, it has been stated it as ex parte decree dated 14.03.2023. Therefore the application is liable to dismissed.

The point for consideration in this application is

3. Whether there is sufficient cause for condonation of delay?

4. Heard the counsel for the respondent who appeared through VC. The counsel for petitioner filed his written arguments before this court on 10.04.2026.

5. The notes papers of this case would show that the defendant filed his proof affidavit as DW1 on 06/03/2019 and Ex. B1 was marked. Thereafter, the court forwarded the case to Adhoc court for the purpose of recording cross-examination of DW1. When the case was posted on 29/03/2019, the DW1 was present and he was not cross-examined. The case was adjourned to 11/04/2019. On that day, the DW1 was present and he was not cross-examined and thereafter, the case was posted to 29/04/2019. On that day also, DW1 was present. Thereafter, the case was posted on 19/06/2019, 01/07/2019, 17/07/2019, 25/07/2019 and 30/07/2019. In all the hearings, the DW1 was present and he was not cross examined on the side of plaintiff. Only on 30/07/2019, the DW1 was partly cross-examined on the side of plaintiff. Thereafter, the case was posted to 08/08/2019, 19/08/2019, 04/09/2019, 19/09/2019, 26/09/2019, 15/10/2019, 21/10/2019. In all the hearings except on 15/11/2019, the DW1 was present before the Court and he was not cross-examined in spite of he waiting in the Court hall till 3.45 p.m. Therefore, the court closed cross-examination of DW1. The plaintiff was the only reason for not completing the cross-examination of DW1 and finally, the defendant side evidence was closed on 30/01/2020 based on the endorsement made by the counsel for the defendant. Thereafter, due to outbreak of COVID-19, the case was then and there adjourned for argument and this case fell within the ambit of Commercial dispute. It was transferred to this court and it was renumbered as COS 471 of 2022. This court posted the case for appearance of parties.

6. The Plaintiff changed his counsel and he appeared on 23-11-2022. He was

directed to issue a notice to the defendant by RPAD. However, instead of sending the notice to the defendant, notice was sent to the erstwhile counsel for the defendant and therefore the AOS was filed with acknowledgment card and there was no representation on the side of defendant on 27/01/2023. Therefore, this court pronounced judgment based on the materials, observing in 16th Para of judgment that since the cross-examination of DW1 was not completed, his evidence cannot be taken into consideration. It is to be noted that only due to the failure of the plaintiff, the DW1 was not cross-examined in full in spite of presence of DW1 before the Court in almost all the hearings. Therefore, on adverse inference should have been drawn as against the plaintiff for non-cross-examination of DW1. Therefore, the decree passed in the suit should be treated as ex parte decree and even the earlier counsel for the defendant had not informed him of the current status of the case. The defendant was not updated with the case hearings. The defendant should not be penalized for thefault of his earlier counsel. Therefore, within 30 days of knowledge of exparte decree, the defendant has filed this application. Therefore, the reason is sufficient. Therefore, the delay is condoned.

In the result, the petition is allowed. No cost.

Dictated by me to the Steno-Typist, directly typed by him in the computer, corrected and pronounced by me in the open court, this 27th day of April 2026.

GANAPATHI SAMY

Digitally signed by GANAPATHI SAMY
Date: 2026.04.27 20:05:25 +0530

Principal Judge
Principal Commercial Court
Egmore, Chennai

Draft/ Fair Order in

I.A.No.1 of 2025

in

C.O.S.No. 471/ 2022

Date: 27.04.2026

Principal Commercial Court,
Egmore, Chennai.