UPLOADED ON 29.04.2026

IN THE COURT OF PRINCIPAL COMMERCIAL COURT,
EGMORE, CHENNAI

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

Dated this 29th day of April 2026, Wednesday

I.A.No. 2 / 2025 in C.O.S. No.138 / 2022

Mrs..S. Kasibanu,
wife of R. Saravanan,
NO.8, K.L.Salma Apartments,
37, West Mada Church Road,
Royapuram,
Chennai – 600 013. Petitioner/ 3rd Defendant

-Versus-

1. M/s. Usha Oil Enterprises,
Rep.by Proprietor Mr.Vijay Kumar,
No. 112, G.A. Road, Old Washermenpet,
Chennai – 600 021. 1st Respondent/Plaintiff

2. M/s. S.N.R. Dhall Mill,
Rep. By its Partner,
Mrs.R.Vijayalakshmi,
W/o. Ravindran,
No.2/4, Vaidhyanathan Street,
Tondairpet,

Chennai 600081
GST No.33AABFS4481L1Z0

3. Mrs.S.Amsadevi,
W/o. Surendran,
Partner,
M/s S.N.R. Dhall Mill,
No.2/4, Vaidhyanathan Street,
Tondairpet,
Chennai.
GST No.33AABFS4481L1Z0.

4. Mrs. V. Tamilselvi,
W/o. R.Venkatesh,
Partner,
M/s S.N.R. Dhall Mill,
No.2/4, Vaidhyanathan Street,
Tondairpet, Chennai – 600 081.
GST No.33AABFS4481L1ZO

5.Mrs.V.Sadhana,
W/o. Vijay
Partner,
M/s. S.N.R. Dhall Mill,
No.2/4, Vaidhyanathan Street,
Tondairpet,
Chennai – 600 081.
GST No.33AABFS4481L1L1Z0. ..Respondents 2 to 5/
Defendants, 1, 2, 4 and 5

This Petition coming on this day for final hearing on 27.02.2026 before me in the presence of M/s. C.Ramesh, learned counsel for the petitioner/3rd defendant; 1st

respondent /plaintiff having been set ex parte for non filing of counter and upon perusing the documents and hearing the arguments of petitioner side and having stood over for consideration till this day, this court today delivers the following :

ORDER

The Petitioner/ 3rd Defendant has come forward with this application under Section 5 of the Limitation Act seeking for condonation of delay of 181 days in taking steps to set aside the ex parte decree dated 15.04.2025

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

1. The petitioner / 3rd defendant never served with any summon in the suit. The 3rd defendant retired from the partnership firm by means of a deed of retirement dated 01.04.2019 followed by the communication of such resignation to Registrar of Firms and issuance of public notice in Makkal Kural tamil daily on 05.08.2020 informing the general public about resignation. Thereafter, the 3rd defendant has constituted a company along with her husband to carry on similar business as that of 1st defendant. The 3rd defendant came to know about the exparte decree only on 02.11.2025 when her husband received a call from one Vijayakumar of plaintiff firm stating that the ex parte decree was passed in April 2025. The suit transaction relates to the year 2022 and therefore, the 3rd defendant cannot be fastened with any liability. Therefore the delay should be condoned.

2. The respondents have not filed their counter.

The point for consideration in this application is

3. Whether the delay shall be condoned?

4. Heard the counsel for the petitioner.

5. The Petitioner has filed this application seeking for condonation of delay in taking steps to set aside the ex parte decree. The perusal of the judgment pronounced in the main suit on 15.04.2025 would show the pronouncement of judgment on merits and not in ex parte as claimed by the 3rd defendant. The perusal of the note papers would show that this Court having satisfied with service of summons on 1 to 5th defendants set them exparte on 18.04.2024. Thereafter defendants 1 to 5 entered appearance through their counsel on 09.09.2024 when the case was posted for exparte evidence and defendants, 1, 2, 4 and 5 filed an application under Order XXXVII Rule 4 of C.P.C. to set aside the exparte order as if this is a summary suit. The said application was allowed on 14.11.2024. For failure of above defendants to give notice of appearance, this Court reserved it for judgment and reopened the case on 28.11.2024 finding that the suit was not a summary suit. The written statement was not filed within time stipulated. Their right to file the written statement was forfeited. The PW1 filed his proof affidavit on 06.01.2025 marking Ex. A1 to Ex.A7. Though the defendants failed to file written statement, they were permitted to cross examine PW1 and PW1 was cross examined on the side of defendants 1, 2, 4 and 5 on 19.02.2025. The defendants were not permitted

to give evidence since they did not file their written statement. Thereafter, this Court after hearing the arguments put forth on the side of the plaintiff, pronounced judgment on merits. The defendants failed to put forth their arguments in the suit. If the 3rd defendant feels aggrieved by the decree and judgment of this Court ought to have filed an appeal against the judgment. It cannot seek to set aside the decree as if it was passed in exparte. If such kind of application is permitted, then in a case consisting of several defendants, the defendants who remain in ex parte would start filing of these kind of application. The application is devoid of merits. Therefore the petition is dismissed. No cost.

In the result, this petition is dismissed. 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 29th day of April 2026.

GANAPATHI SAMY

Digitally signed by GANAPATHI SAMY
Date: 2026.04.29 18:42:00 +0530

Principal Judge
Principal Commercial Court
Egmore, Chennai.

Draft/ Fair Order in
I.A.No.2 of 2025
in
C.O.S.No. 138 /2024
Date: 29.04.2026

Principal Commercial Court,
Egmore, Chennai.