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A.No.3334 of 2025 in
TOS.No.42 of 2006

C.V.KARTHIKEYAN, J.

This Application has been filed to set aside the order dated 31.10.2023 in TOS.No.42 of 2006 which was dismissed for non-prosecution and restore the same.

2. On 07.07.2025, this Court had passed an order in A.No.692 of 2025 which had been filed seeking to condone the delay of 355 days in filing a petition to set aside the order dated 31.10.2023. Counter had been filed on behalf of the respondents therein raising objections. This Court had opined that a duty is cast on the Court to examine the validity and genuinity of the Will, if it is put before this Court seeking proof of the same.

3. The learned counsel for the respondents is present today and raised objections that the learned counsel for the applicant / plaintiff had deliberately absented himself during the course of hearing and therefore, the Court was correct in dismissing the Testamentary Original Suit for non-prosecution.



C.V.KARTHIKEYAN, J.

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4. But unfortunately, that would not advance the case of the defendants in any manner and it would only be appropriate to contest the genuineness of the Will by filing a written statement. The learned counsel stated that the written statement has not yet been filed. The respondents have an obligation to file written statement, if at all they raise any suspicious circumstances surrounding the execution of the Will.

5. This application is allowed. However, it is observed that if there is a delay in filing the written statement and the learned counsel states that the Testamentary Original Suit had not been listed quite regularly before this Court and the delay is explainable, then, the applicant herein cannot stand on formalities while examining the delay in filing the written statement.

29.07.2025

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