

**IN THE COURT OF THE MUNSIF, KOCHI**

**Present :-**

**Smt. Simi P Siju, Additional Munsiff**

Monday the 13<sup>th</sup> day of October 2025/ 21<sup>st</sup> Aswina, 1947

**I A No. 2/2025 in O.S. No. 260/2024 and I A No.3/2025 in  
O.S. No. 260/2024**

**I A No. 2/2025 in O.S. No. 260/2024**

**Petitioner/Defendant :-**

- 1 Prabeesha V P, aged 40 years, D/o.Prathapan, residing at Manaparambil House, C R Lane, Cherai, Ernakulam-683514
- 2 Sruthi, aged 35 years, residing at Nambiath, Moothakunnam, Ernakulam-683516

By Advs. Julie Jaya (Legal Aid)

**Respondent/Plaintiff:-**

Union Bank of India, having its head office at 239, Vidhan Bhavan Marg, Nariman Point, Mumbai: Regional Office at Union Bank Bhavan, Ernakulam-682031 and having one of its Branch at Edavanakkadu Pazhayakkatt Vareed Master Memorial Shopping Complex, Ground Floor, Main Road, Near Grama Panchayath, Edavakkadu, Ernakulam. Represented by its Branch Manager, Union Bank of India, Edavanakkadu Branch.

By Advs. S Krishnakumar & Nithin Krishnan

**I A No.3/2025 in O.S. No. 260/2024**

**Petitioner/Defendant :-**

- 1 Prabeesha V P, aged 40 years, D/o.Prathapan, residing at Manaparambil House, C R Lane, Cherai, Ernakulam-683514

2 Sruthi, aged 35 years, residing at Nambiath, Moothakunnam, Ernakulam-683516

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By Advs. S Krishnakumar & Nithin Krishnan

These petitions are come up for hearing before me on 06.10.2025 and the court on 13.10.2025 passed the following:-

**COMMON ORDER**

I.A.No.03/2025 is filed by the petitioner/defendant to condone the delay of 82 days in filing the petition to exparte order. I.A.2/2025 is filed by the petitioner/defendant to set aside the exparte order passed against him on 11.07.2025. Since both applications are interconnected, they are considered together for the sake of convenience.

**2. The averments in the petitions in brief are as follows:-** The petitioner is the 1<sup>st</sup> defendant in the above

suit. The above suit was filed for realization of money. The petitioners/defendants set exparte on 11.07.2025. The defendants appeared through the legal aid counsel. During the last 3 months 1<sup>st</sup>defendant and her family members were suffering from chickenpox. Due to this reason defendants failed to give their instructions to the counsel on proper period. Moreover the defendant is ready to settle the matter through the mediation and so the delay in filing written statement occurred. Actually the defendants are ready to remit the pending dues and willing to proceed with the loan account. There is no willfull laches or malafide intention from the defendant's side. There is a delay of 82 days in filing the petition. The delay happened only for there as on mentioned above. There is no wilful laches or omissions on the defendants side in the said matter. Hence it is highly necessary for the ends of justice that the said delay is condoned and the set aside application may be taken into file and heard and decided on merits. Hence the petition.

3. The respondent filed the objection contending that the petition is not maintainable either in law or on facts. The defendants were granted sufficient opportunities to file their written statement but failed to do so. The exparte order was passed only

after the defendants deliberately defaulted and neglected to exercise their rights. If the petitioners want to contest the case, their readiness to settle the loan account alone to be pleaded. But the contradictory plea reveals that their readiness is only a mere excuse for setting aside the ex parte order and to prolong the case. The case has already been posted for evidence and the respondent/plaintiff has fully paid the balance court fee and proof affidavit has already been filed. Allowing the present petition will seriously affect the petitioner and cause unnecessary delay in realization of money from the petitioners/defendants. The petitioners filed the petition on 11.09.2025, after a statutory period. The petitioners/defendants were set ex parte on 11.07.2025. The petition is not filed within the prescribed period and did not file any petition for condonation of delay u/s 5 of the Limitation Act. In the absence of delay condonation petition, the petition is liable to be dismissed as not maintainable.

**4. The points arise for consideration:-**

1. Whether the petition to restore the suit  
can be allowed?

2. Reliefs and costs?

5. Heard both sides. Perused petition, objection and case records.

6. **Point No.1 to 3:-** The specific case of the petitioner is that, the petitioners/defendants was set ex parte on 11.07.2025. The defendants appeared through the legal aid counsel. During the last 3 months 1<sup>st</sup> defendant and her family members were suffering from chickenpox. Due to this reason defendants failed to give their instructions to the counsel on proper period. The respondent contended that the defendants were granted sufficient opportunities to file their written statement but failed to do so. The ex parte order was passed only after the defendants deliberately defaulted and neglected to exercise their rights. If the petitioners want to contest the case, their readiness to settle the loan account alone to be pleaded. But the contradictory plea reveals that their readiness is only a mere excuse for setting aside the ex parte order and to prolong the case. Considering the reasons stated in the application and upon a perusal of the documents produced, this court is of the view that the petitioner has shown sufficient cause for not filing the written statement. Also, it is equally important to note

that the only prejudice that can be caused to the respondent, if the petition is allowed, is that he has to contest the suit on merits. In such circumstances, it is fair and proper to give one more opportunity to the petitioner to file a written statement and contest the case. Accordingly, point No.1 is found in favour of the petitioner.

7. **Point No.2:-** In the light of the above findings, this court of the view that petition can be allowed.

**In the result, the petition is allowed as follows:-**

1. The delay of 82 days in filing the petition to set aside the exparte proceedings is condoned.
2. The exparte order dated 11.07.2025 is hereby set aside.
3. Petitioner shall pay a cost of ₹1000/- to the plaintiff/Respondent within 15 days from the date of this order.

(Dictated to the Confdl.Asst; transcribed and typed by her,corrected and pronounced by me in open Court on this the 13<sup>th</sup> day of October 2025.)

Sd/-

**Simi P Siju**  
**Additional Munsiff**

**APPENDIX : NIL**

Id/-

**Additional Munsiff**

**//True Copy//**

**Additional Munsiff**

**O R D E R**

**I.A. No.2 &3 of 2025**

**O.S. No.260/2024**

**Dated : 13.10.2025**