

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI  
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.  
District Munsif, Uthangarai**

On this Thursday, the 8th day of August 2024

**I.A.No. 01 of 2022 in O.S.No. 09 of 2020  
TNKI13-000013-2020**

Vasantha

...Petitioner / Plaintiff

/versus/

1. Thirupathi (Died)

...Defendant

2. Minor. Keerthika

3. Minor. Thivesh

(represented by Court guardian)

4. Jayagandha

5. Elumalai

...Respondents / Proposed Parties

This interlocutory application came up before this Court on 23.07.2024 for final hearing in the presence of advocate Thiru. S. Moorthi, the learned counsel for the petitioner and advocate Thiru. M. Murugesan, the learned Court Guardian for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and the respondents 4, 5 set *ex parte* for non-appearance upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

**ORDER**

The application has been filed under section 5 of the Limitation Act, 1963 for condoning delay of 369 days in filing applications to implead legal representatives of the deceased 1<sup>st</sup> defendant.

***The averments of the petitioner in brief:***

1. The petitioner herein is the plaintiff in the suit filed against the deceased defendant for recovery of money borrowed on promissory note. The petitioner avers



that while the suit was pending, the defendant Thirupathi died on 26.05.2021 and his wife had already died on 23.06.2018. The petitioner avers that the respondents, who are Thirupathi's minor daughter Keerthiga, minor son Thivesh, and Thirupathi's mother Jegatha, his father Elumalai are the legal representatives of the deceased defendant. The petitioner avers that the applications ought to have been filed within 150 days, however, for certain reasons there has been a delay of 369 days. Hence, the petitioner prays for allowing this application and condone the delay.

***The averments of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in brief:***

2. The respondents admit that the defendant Thirupathi died on 26.05.2021 and also admit that his wife Pavithra had also died on 23.06.2018. The respondents aver that the petitioner has not filed application to implead legal representatives within 90 days and the suit has abated. The respondents aver that the petitioner has not furnished any reason for the delay and the defendant had not borrowed any money from the petitioner, and hence, there is no necessity to implead the minor proposed defendants. Hence, the respondents seek for dismissal of the application.

***The non-appearance of the 4<sup>th</sup>, 5<sup>th</sup> respondents:***

3. The notices to the respondents were duly served and the respondents 4, 5 were called absent and were set *ex parte* on 04.10.2023.

***Point for consideration:***

4. Whether this application is liable to be allowed?

***Evidence:***

5. Neither of the parties to this application has adduced any oral or documentary evidence.



***Discussion:***

6. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for recovery of sum of Rs. 50,000/- along with interest by the petitioner against the deceased defendant. During the pendency of the suit, the defendant died on 26.05.2021 and the defendant counsel represented the same before this Court on 16.08.2022. In pursuant to the representation, the applications to implead the legal heirs of the deceased defendant has been filed along with this application to condone the delay. A perusal of the affidavit of the petitioner would show that the petitioner has averred that for certain reasons, the petitioner was unable to file application to implead the legal heirs and that delay has ensued. But the petitioner failed to disclose what are the reasons that prevented the petitioner from filing the applications to implead the legal heirs of the deceased defendants and it is kept unanswered by the petitioner. However, the date of death has been admitted by the respondents to be of 26.05.2021 and a perusal of the case proceedings would show that the courts were not functioning due to the COVID-19 pandemic and it was only on the resumption of the normal court functioning, the learned counsel for the deceased defendant made representation that the defendant has died. The notices to the proposed parties 4 and 5, who are the parents of the deceased defendant, were duly served and the respondents 4 and 5 were set *ex parte* on 04.10.2023. Subsequently, a court guardian was appointed for the minor respondents. Though the petitioners have not assigned proper reasons, this Court takes note of the extraordinary circumstances prevailing in the year 2021 due to COVID-19 pandemic and inclined to allow this application with cost.



***Result:***

***7. As a result, this application is allowed on condition of payment of cost of Rs. 200/- (Rupees Two-Hundred only) to the District Legal Services Authority, Krishnagiri on or before 19.08.2024.***

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 8th day of August 2024.

District Munsif  
Uthangarai

**Annexure**

**Petitioner side evidence**

Petitioner side Witnesses: Nil

Petitioner side Exhibits: Nil

**Respondent side evidence**

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

**Court Documents:** Nil

District Munsif  
Uthangarai