

was unable to meet and instruct his counsel and the petitioner was apprised of the fact of the *ex parte* decree only after service of notice in E.P.No. 11 of 2019. The petitioner avers that since the complaint in the year 2017 was pending for action, the petitioner was unable to apply to set aside the *ex parte* decree and ever after discharge of the debt borrowed from the said Mani, he has fabricated this suit as if his father had lent money to the defendant and filed this frivolous suit. The petitioner avers that the respondents has been involving in unlawful activities like this with many others and it has been complained to the Kallavi police station and to the Superintendent of police by multiple petitions and the said Mani have not been appearing before the police for investigation. The petitioner avers that since the police have been delaying in taking action against the respondent, the petitioner has filed this application for setting aside the *ex parte* decree passed against the petitioner and this application to condone the delay. Hence, the petitioner prays for allowing this application and condone the delay of 1659 days.

The averments of the respondent in brief:

2. The respondents deny the averments of the petitioner that the *ex parte* decree dated 18.12.2018 was passed since the petitioner failed to file written statement as false and also deny that the respondent falsely file this suit on the loan borrowed by the one Mani and also denies that the plaintiff was suffering from jaundice and was undertaking indigenous medicine. The respondent avers that the petitioner has reasoned that he has lodged multiple complaints to the police as a reason to allow this application which is false. The respondent avers that the petitioner after 5 years on notice in E.P.No. 11 of 2019 appeared on 24.11.2023 and had also filed application under Order XXI Rule 106 (3) of Code of Civil Procedure, 1908 numbered as R.E.A.No. 02 of 2021 and 03 of 2021 and the execution proceedings stands posted for means evidence and the petitioner has filed this application after elapse of almost 5 years or 1659 days. The respondent avers that the petitioner has appeared in the suit

in O.S.No.58 of 2018 through one advocate Thiru. M. Madeshwaran and had filed vakalat on 24.09.2018, and thereafter, sought adjournments on 25.10.2018, 30.11.2018, 27.11.2018, 01.12.2018 for filing of written statement, and since, the learned counsel reported no instructions, the petitioner was set *ex parte* and the petitioner has wrongly mentioned the date of *ex parte* order as 01.12.2018 instead of 18.12.2018. The respondent avers that in the year 2019 itself E.P.No. 11 of 2019 was filed and even after effecting multiple notices to the petitioner, the petitioner had been evading service and the notice was served through substituted service by way of paper publication and subsequently arrest was ordered and the petitioner had filed this as the reason for setting aside the *ex parte* order in the execution proceeding and filed two applications in R.E.A.No. 02 of 2021 to condone the delay of 20 days and R.E.A.No. 03 of 2023 to set aside *ex parte* order. The respondent avers that after full enquiry of both sides, both petitions came to be allowed and it was posted for means evidence and means evidence was also taken and the petitioner was also cross-examined. The respondent avers that the petitioner came to know about the *ex parte* decree only upon enquiry by the petitioner from his counsel is false and this application to condone inordinate delay of 1659 days based on false averments is liable to be dismissed. The respondent avers that the petitioner has averred to have been suffered from jaundice for 1 year since 2017 but has not produced any evidence to show the same, however, the suit was only instituted in 2018 and the illness would be of no reason since the petitioner has made representation through counsel on 17.09.2018 and reasons that the illness in the year 2017 is the cause of the delay of 1659 days in this application under Section 5 of the Limitation Act, 1963 and the averments of knowing the fact of *ex parte* decree only when the bailiff of this Court approached the petitioner as averred in application under Order XXI Rule 106 of the Code of Civil Procedure, 1908 are contrary in nature. The respondent avers that the petitioner has not produced any document to show that he was ill and also not produced the complaint given in 2017. The respondent avers that this application is

filed after 5 years only to prolong the proceedings and seeks of dismissal of the application. The respondent avers that if the Court is incline to allow this application the respondent seeks that it may order the petitioner to deposit the claim amount in the execution petition and seeks of dismissal of the application.

Point for consideration:

3. Whether this application is liable to be allowed?

Evidence:

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

Discussion:

5. 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. The petitioner herein is the defendant in the suit who has filed this application to condone the delay of 1659 days in making application under Order IX Rule 13 of the Code of Civil Procedure, 1908 to set aside the *ex parte* decree. The petitioner has reasoned that it is a false suit and that the petitioner has complained to the Superintendent of Police in the year 2017 and there was no action taken, and thereafter, the petitioner was affected by jaundice for a year and the petitioner was apprised of the fact of the proceeding only upon the receipt of notice in E.P.No. 11 of 2019. The respondent has resisted this application that the petitioner has appeared through counsel during the hearing of the suit, and thereafter, did not file any written statement and his counsel had reported no instructions, and thereafter, the petitioner has also appeared in the execution proceedings and filed applications to set aside *ex parte* order passed therein and that the averments of complaint and illness are all false.

6. A perusal of the case proceedings would show that the petitioner has appeared on 20.08.2018 after due service of summons and appeared through counsel and was granted opportunities on 17.09.2018, 24.09.2018, 25.11.2018, 20.11.2018, 27.11.2018, 01.12.2018 to file written statement, and then, the learned counsel for the petitioner reported no instruction and the petitioner was set *ex parte*, and thereafter, an *ex parte* decree was passed against the petitioner on 18.12.2018. Though the petitioner has averred that he had complained to the Superintendent of Police in the year 2017, the petitioner has not submitted the copy of the complaint before this Court even after denial by the respondent. The petitioner has not filed any document in support of his averments to condone the delay. It is not the case of the petitioner that the summons was not properly served, however, the petitioner has promptly appeared, and thereafter, failed to appear and contest the suit further. It is the case of the petitioner that this suit is a false one instituted by the respondent for the debt borrowed from the son of the respondent. The petitioner has assigned reasons of illness due to jaundice and its indigenous treatment for almost 1 year as another reason for not filing application to set aside *ex parte* decree earlier. The respondent has resisted this averment that the petitioner has not filed any document in support of his averments. As contended, the petitioner has not let in any oral or documentary evidence in support of his averments of illness. However, the petitioner has filed this application along with the written statement to show that the petitioner has shown *bonafide* interest in contesting the suit further. The petitioner has also raised grounds such as that the respondent has filed this suit on frivolous averments and the petitioner had originally borrowed only from the son of the respondent and that the suit promissory note is a fabricated one. Further, the petitioner has also averred that the petitioner has instituted a complaint before the police alleging the fabrication of the promissory notes. Though the petitioner has not produced any documentary evidence to support the same, this Court is of considered view that the petitioner

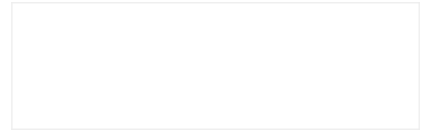
ought to heard in the suit for conclusive determination of the dispute between the parties.

7. The Honourable Higher Courts have time and again insisted to adopt a liberal approach towards condoning delay and have directed to avoid a pedantic approach. However, at the present case in hand, the delay sought to be condoned is 1659 days. Since the petitioner has filed this application along with written statement to condone the delay and has also assigned reasons of prolonged illness, this Court is of considered view that the petitioner may be afforded yet another opportunity in contesting the case. However, for the delay of 1659 days this Court is of view that a heavy cost of Rs. 5,000/- be imposed on the petitioner to compensate the inordinate delay caused. This Court is also of considered view that the respondent shall be fairly compensated and the petitioner shall be afforded a chance to present his fullest case and thereby affording equal and sufficient opportunities to both parties and facilitating effective and conclusive determination of dispute between the parties. Hence, considering the plea of prolonged illness, submission of written statement and the averments such as falsity of the suit promissory note raised by the petitioner in his written statement, this Court is inclined to allow this application on cost.

Result:

8. As a result, this application is allowed on condition of payment of cost of Rs. 5,000/- (Rupees Five Thousand only) by the petitioner to the respondent on or before 09.02.2024.

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 31st day of January 2024.



District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

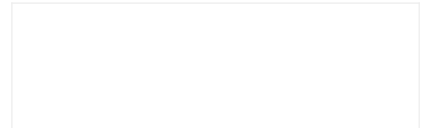
Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai