

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, (FTC)**

**ARANI, TIRUVANNAMALAI DISTRICT.**

**PRESENT: Tmt. K.VIJAYA, B.Sc., B.L.,**

**ADDITIONAL DISTRICT JUDGE, ARANI.**

**FRIDAY, THE 16<sup>th</sup> DAY OF FEBRUARY, 2024.**

**I.A.No.01/2023 in O.S.No.59/2023**

T.Chelizhan

... Petitioner/Defendant

/Vs./

A.Murugesan

...Respondent/Plaintiff

This petition was coming before me for final hearing on 14.02.2024 in the presence of Thiru. K.Thenrajan, Advocate for the Petitioner / Defendant and of Thiru. P.Silambarasan, Advocate for the Respondent / Plaintiff and perusing the relevant records of this case, and having stood over for consideration, till this day, this court delivers the following...

**ORDER**

Petition filed by the petitioner under Section 5 of Limitation Act to condone the delay of 17 days to file leave to defend application in the above suit in O.S.No.59/2023 on the file of this court and for other orders.

**2) The facts stated in the petition in brief is as follows:-**

The petitioner is the defendant in the suit. In the month of December 2022, the petitioner was transferred to Nilgiri towards his employment and the Respondent used the absence of the petitioner and created the forged documents and has filed the suit. The Respondent very much knowing the transfer of the petitioner and the Respondent has taken a steps and legal notice at the petitioner's old address. The petitioner received summons of this suit from this court on 18.10.2023 mentioning the hearing date as 08.11.2023 and due to oversight the petitioner failed to note that the suit under Order XXXVII and as a government employee, the petitioner could not come to leave and appeared before this court. But, the petitioner conducted his counsel to file Vakalath and to prepare for

petition to leave the defend. In mean time, there was a delay for 17 days for the petitioner's appearance and filing leave to defend petition. The delay is neither willfull nor wanton. The petitioner is having a good case on merit. If the petition not allowed, the hardship will be caused to the petitioner. Hence, this petition.

**3) Brief narration of counter filed by the Respondent as follows :-**

The Respondent / Plaintiff denies the petition averments on the ground that the reasons stated in the petition is contrary to real facts. But, telling story by causing economical loss and dodging the proceedings to the Respondent. There is no sufficient cause to condone delay to the petitioner. Hence, the petition is to be dismissed with costs.

4) On both sides neither exhibits were marked nor witnesses were examined.

**5) The point for determination:-**

Whether the petition is to be allowed?

**6) Point:-**

Heard both sides. Records perused. On a perusal of records, the plaintiff has taken summons as per the Order 37 Rule 2 Civil Procedure Code and Appendix (B) Form-4 and denoting at present address at Nilgiri. The summons has been served to the defendant on 18.10.2023 issued by Central Nazir, District Court, Udagamandalam. The summons has been duly served to the defendant. Hence, the stand taken by the petitioner / defendant stating that the sending summons in the old address is not sustainable. However, considering the defendant's employment and the distance, the delay occurred after the service of summons is the sufficient cause also. Considering the facts and circumstances of the case and in the interest of the Justice, the delay is condone and as such, the petition is to be allowed.

**7. In the result, this petition is allowed. No Costs.**

Dictated by me to the Steno typist and typed by her directly, corrected and pronounced by me in open court, this the 16<sup>th</sup> day of February, 2024.

**Sd/- K.Vijaya,  
Additional District Judge,  
Arani.**

**Both Side Witnesses and Exhibits:- Nil.**

**Sd/- K.Vijaya,  
Additional District Judge,  
Arani.**