

In the Court of Subordinate Judge, Aruppukottai

**Present : Thiru. V. Ramalingam, B.Sc., B.L.,
Subordinate Judge, Aruppukottai.
E.A.No.6/2023 in E.P.No.40/2022**

Thursday, the 7th Day of March 2024

1. N. Bose		
2. Balamurugan	...	Petitioners/1 st , 5 th Respondents/ 1 st , 5 th Defendants
	/Vs/	
Pappathi @ Vallimayil	...	Respondent/Petitioner/Plaintiff

This Application came up for final hearing before me on 01.02.2024 in the presence of Thiru. R. Muthuchamy, Advocate for the Petitioners and Thiru.N. Solairaj, Advocate for the Respondent and upon hearing the arguments on both side and upon perusing the records, having stood over till this date for my consideration, this Court passed the following

ORDER

1. This Application has been filed by the Petitioners Under Section 5 of Limitation Act to condone the delay of 97 days caused in filing application to set aside the exparte order passed against the Petitioners on 12.07.2022.

2. Brief averments of Petition : -

The Respondent has filed main Execution Petition and on 07.06.2022, the case was posted for filing of counter by the Petitioners. On that date, the Petitioners went to other state for survival and after returning, the Petitioners enquired about the case proceedings with their counsel, their counsel informed about the exparte order passed against them in main E.P. on 07.06.2022. The Petitioners should have filed application to set aside the exparte order passed against them within 11.08.2022. But, 97 days delay caused in filing application to set aside the exparte order passed against them. The above said delay is caused neither willfully nor wantonly. Hence, this application is to be allowed.

3. Brief averments of Counter of Respondent:-

The reasons stated in the application are false and not acceptable. The Petitioners have not stated any valid reason to allow this application. In main E.P., the case was posted for filing of

counter on several days and lastly on 07.06.2022, exparte order was passed, since the Petitioners had not filed counter. Section 5 of Limitation Act does not apply for this application. The Petitioners are set exparte from the beginning of the main suit. The Petitioners had let the case to exparte with an intention to drag on the main case proceedings. The Respondent is suffering from not being able to collect the money for more than 9 years. Hence, this application is to be dismissed.

4. Point for consideration in this Application is whether this Petition is to be allowed or not?

5. **Point:-**

Heard both sides. Perused available records.

6. The Petitioner has filed this Application to condone the delay of 97 days caused in filing application to set aside the exparte order passed against the Petitioners on 07.06.2022. Eventhough, the Respondent has vehemently opposed the Petitioner's case, the Respondent has not stated in his counter as what kind of prejudice would cause if at all this application is allowed. Hence, this court feels that a fair opportunity will be given to the Petitioners, since this is court of first instance and the reasons stated in the application are acceptable. Hence to putforth both side case before this court to decide the case on merit, this court grants opportunity to the Petitioner with condition, since this application has been filed with delay of 97 days.

7. In the result, this application is allowed with condition that the Petitioners shall pay the cost of Rs.1000/- to the Respondent on or before 14.03.2024, failing which, this application shall stand dismissed. Call on 14.03.2024.

Dictated to the Stenographer and transcribed and typed by her in the computer and after correction, this Order is pronounced by me in the Open Court this the 7th day of March 2024.

Subordinate Judge,
Aruppukottai.

Witnesses examined on the side of the Petitioners, Respondent:-
Documents marked on the side of the Petitioners, Respondent:-

Nil
Nil

Subordinate Judge,
Aruppukottai.