

IN THE COURT OF THE DISTRICT JUDGE, ALAPPUZHA
Present: Sri. K.K.Balakrishnan, District Judge
Thursday the 22nd day of January, 2026/ 2nd Magham 1947

I.A. No.1/2025 in CMA No.54/2025
(Filed on 27.09.2025)

Petitioners/:
Appellants

1. Augustine Joseph, Aged 55 years, S/o Joseph, Kocheekkaran House, Vandanam Muri, Punnapra Village, Punnapra P.O, Alappuzha District
2. Anila, Aged 23 years, D/o Late Betty, Kocheekkaran House, Vandanam Muri, Punnapra Village, Punnapra P.O, Alappuzha District
3. Babila, Aged 20 years, D/o Late Betty, Kocheekkaran House, Vandanam Muri, Punnapra Village, Punnapra P.O, Alappuzha District

By Adv.Sri.S.Sulfikar

Respondent/ :
Counter Petitioner

Antony.D, S/o Devassia, Nadappura House, Kanjippadam Muri, Ambalappuzha South Village, Ambalappuzha Taluk

By Adv.Sri.K.B.Viswanathan Pillai

This petition having been finally heard on 22.01.2026 and the court passed the following:-

ORDER

The legal representatives of defendant in OS 1043/2016 on the file of Court of Principal Munsiff, Alappuzha, filed this petition under Section 5 of Limitation Act, against the order passed by that Court on 02.09.2021 in RP (IA) No.122/2020. The respondent herein is the counter petitioner in RP (IA) and plaintiff in the suit. The summary of facts stated in the affidavit attached to the petition are following:

2. Appeal is preferred against the order of the trial court in RP (IA), but delay was caused. The suit was for realisation of an amount of ₹2.5 lakh against the original defendant, who is the wife of first petitioner and mother of second and third petitioners. She was set *ex parte* for the reason of her failure to file written statement. Later, she filed written statement alongwith restoration

petition, IA No.122/2020. The respondent herein filed objection and after hearing both sides, the petition was dismissed by the trial court on 02.09.2021. Original defendant died on 25.09.2022. She was not aware about the status of the case. First petitioner has been working in abroad more than 25 years. Second and third petitioners are minors at that time and also unaware about the stages of the case. They were under the impression that the suit has been concluded during the lifetime of original defendant. On 02.04.2025 petitioners received a notice from the trial court in an Execution Petition. So, they contacted the counsel of the original defendant and only at that time the learned counsel came to know about the death of the original defendant. Though he tried to contact several time, but unable to contact her. Therefore, he was unable to inform the order of the trial court. Thus, delay was caused in preferring the appeal against the order of the trial court passed in the Restoration Petition. First petitioner came to native place on regular intervals and he also not aware about the position of the case. Original defendant was conducting another case before Consumer Dispute Redressal Forum, Alappuzha (for short 'CDRF'). As second and third petitioners were minors, they had no opportunity to interfere in the case. Mother, the original defendant, died due to cancer after prolonged treatment. Moreover, by that time, COVID-19 pandemic also broke out. The petitioners came to know about the case only after receiving notice in Execution Petition from the trial court. Thereafter, they contacted their counsel and unfortunately the case file also misplaced. After two months, old case file traced out. So, delay of 1454 days caused in preferring the appeal against the order of the trial court. The reason for delay is neither wilful laches nor negligence. If appeal is not admitted, irreparable injury will be caused to the petitioners. Therefore, pleaded to condone the above stated delay in filing the appeal.

3. Against the petition, detailed counter affidavit filed by the respondent. He is a construction contractor by profession. Petition is not

maintainable either in law or on facts. The contention of petitioners 2 and 3 contention that they were minors at the time of the order is false. A contract was given to the respondent by original defendant, the mother of second and third petitioners and their father, first petitioner, to construct a two storied residential house for them. Petitioners are aware about these facts. Mother of second and third petitioners instituted several cases since 2016 against the respondent and all these were prosecuted by the petitioners. They have continued construction of the house after spending ₹45 lakh through another contractor without rescinding the contract executed with the respondent. Petitioners neglected the present case because the decree is only for ₹2.5 lakh. So, there is gross negligence in contesting the suit by the petitioners. If the decree is set aside, respondent has to bring seven witnesses, who were already examined in the year 2016. So, bringing of all these witnesses after ten years is not practical as many of the witnesses may not be alive. The cost of examination of witnesses will be more than the amount covered by the present decree. The decree passed by the trial court is on merits. Petitioners strongly and vigorously conducted different cases during the time in the same subject matter. So, the reason stated by the petitioners for setting aside the order of the Restoration Petition is baseless. There are two engineers' report in this case. The original defendant filed CC 321/2016 before CDRF and it was dismissed. Present decree was passed based on the report of the engineers appointed by her. Second engineer's report was submitted at the request of respondent. The rate of construction of the home was ₹2,100/- per Sq. feet. Total area covered by the proposed building was 1700 Sq.feet. The defendant paid the amount in petty installment ranging ₹50,000/- to ₹1 lakh. Due to the delay in payment, starting of the work was delayed. The payment schedule also part of the contract. Defendant paid ₹11.5 lakh to the respondent herein by six installments. As per the contract, defendant has to pay ₹13.5 lakh to the respondent herein. In

addition to that, eighteen pillars were also constructed by him. Defendant paid only ₹11.5 lakh to the respondent for the construction of their home. Therefore, the defendant is liable to pay ₹2.5 lakh with interest at the rate of 18.5% per annum. So, the respondent filed suit against the defendant for realisation of that amount. Finally, the suit was decreed. The suit is filed in the year 2016 and after many years, this appeal is filed and therefore, the reason stated by the petitioners for condoning the delay in filing the appeal is baseless. The petition itself is an abuse of process of law. There is no need to set aside the decree passed by the trial court. No serious issue is involved in the suit. The decree is for a small amount. Therefore, the respondent pleaded to dismiss the petition with cost.

4. Heard both sides.

5. The only point that arise for consideration is that, whether the reason stated by the petitioners is sufficient cause to condone delay of 1454 days in filing the appeal ?

6. **The Point:** The learned counsel appearing for the petitioners argued that first petitioner's wife and mother of second and third petitioners died after prolonged treatment for cancer. First petitioner was in abroad and he is the only source of livelihood of the family. He visited home only few days after two or three years. The case was contested by his wife, the defendant in the suit. Meanwhile her health condition was worsened and unable to provide sufficient follow up in the matter. Second and third petitioners were minor at the time of institution of the suit and they are also unable to follow the case procedures. Meanwhile, COVID pandemic lockdown declared and the defendant was unable to contact her counsel to do necessary follow up in contesting the suit. Learned counsel further submitted that CDRF matter is still pending before the State Appellate Forum. The subject matter is in connection with a contract for the construction of the residential house of the petitioners.

The learned counsel also argued that no prejudice will be caused to the respondent herein, if delay in filing the appeal is condoned. The learned counsel submitted that if any problem is caused by allowing the petition, petitioners are ready to pay reasonable cost to compensate the respondent. Therefore, the learned counsel argued for condonation of delay in filing the appeal.

7. Learned counsel appearing for the respondent vehemently opposed the above contentions and submitted that the subject matter is only for ₹2.5 lakh. The defendant and now the petitioners purposefully dragged the disposal of the suit to escape from their financial liability. The reasons stated for delay in the petition are baseless and the petition is filed only to delay the execution petition pending before the trial court. It is also argued that the defendant contested the case pending before CDRF and the petitioners are well aware about the suit pending before the trial court. So, the claim of the petitioners that they have no knowledge about the suit pending before the trial court is false. Another point argued by the learned counsel is that respondent already spent huge amount for contesting the suit. Respondent examined seven witnesses to prove his case and it is very difficult to recall them if suit is restored on file. The learned counsel concluded that the respondent spent ₹2.5 lakh for the construction of the house of the petitioners in addition to the amount already paid. Therefore, there is no reason to condone delay in filing the appeal as the subject matter is properly adjudicated by the trial court. Thus, the learned counsel pleaded for the dismissal of the petition.

8. The subject matter is a money suit filed by the respondent herein against the defendant for realisation of ₹2.5 lakh with interest @ 18 % per annum. First petitioner is the wife of original defendant and petitioners 2 and 3 are their children. The defendant failed to file written statement on time and she was set exparte and finally on 23.10.2020 an exparte order was passed by the

trial court. Subsequently, R.P.I.A.122/2020 filed on 09.12.2020 by the defendant which was also dismissed by the trial court on 02.09.2021. Now the appeal is filed against the order of the trial court in R.P.I.A. but with delay of 1454 days.

9. The question in the matter is that the reasons stated by the petitioners are sufficient cause under S.5 of the Limitation Act. There is no dispute from the respondent with respect to the cause of death of original defendant, who is the wife of first petitioner and mother of second and third petitioners. As per the affidavit, she died due to cancer on 25.09.2022. As per the affidavit, second and third petitioners are aged 23 years and 20 years respectively. So, it is clear that at the time of institution of the suit petitioners 2 and 3 were minor children. The assertion of the first petitioner is that he is working in abroad and the suit is contested by his wife are also not disputed by the respondent. It is true that at the end of 2019 COVID pandemic broke out and it lasted upto the year 2022. The restoration petition was dismissed on 02.09.2021. So, it is clear that the restoration petition dismissed during COVID pandemic. The respondent has no case that petitioners herein never appeared or contested the suit before trial court. It is also relevant to note that the CDRF matter also contested by the deceased defendant.

10. The main reason stated by the petitioners is that they have no knowledge about the order passed by the trial court as the matter was contested by the original defendant, subsequently, she was affected by cancer and on 25.09.2022, she died due to cancer. First petitioner is working in abroad and second and third petitioners have just completed age of majority at the time of passing of the order by the trial court. The COVID pandemic out break also happened during this period. So, considering the above facts, there is merit in the contentions of the petitioners that they have no information about the orders passed by the trial court. Therefore, considering all the said facts and circumstances, I am of the view that the reasons stated by the petitioners for

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causing delay in filing the appeal is sufficient cause u/s.5 of the Limitation Act. Hence, for the interest of justice, delay of 1454 days in filing the appeal is to be condoned. Considering the grievance of the respondent, the petitioners are liable to pay reasonable amount of cost to the respondent. In the above facts and circumstances, I am of the opinion that ₹5,000/- is to be paid as cost to the respondent herein for the inconvenience caused to him. So, the petition is allowed, delay in filing the appeal is condoned and petitioners are directed to deposit cost of ₹5,000/- before the trial court on or before 21.02.2026. If the condition is not complied, the petition shall be treated as dismissed. Point answered accordingly.

In the result, petition allowed.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 22nd day of January, 2026).

Sd/-
K.K.BALAKRISHNAN
DISTRICT JUDGE

APPENDIX: Nil

Id/-
DISTRICT JUDGE