

IN THE COURT OF THE SUB JUDGE, CHERTHALA

Present: Ms. Lakshmy. S, Sub Judge

Wednesday, the 25th March 2026 / 4th Chaithra 1948

IA.1/2023 in AS.7/2023

(Filed on 15.02.2023)

Petitioner/Appellant : Ben Joseph, S/o Late Prof.A.C.Joseph,
Arattukulam House, Asramam Ward,
Avalookunnu.P.O, Aryad South Village,
Ambalappuzha, from Arattukulam Ward No: 1,
Mararikkulam North Panchayat,
Perunnermangalam Muri, Chethi.P.O, Cherthala

By Adv. T. Jayakrishnan, Adv. S. Lekha,
Adv. Hormis Abraham & Adv. Jintu. T. Babu

Respondent/ Respondent : Alan Sebastian Joseph,
S/o Late Prof.A.C.Joseph, Arattukulam Ward
No:1, Mararikkulam North Panchayat,
Perunnermangalam Muri, Chethi.P.O,
Chennaveli, Mararikkulam North Village,
Cherthala

By Adv. R. Pramod

This petition coming on for hearing on 18.03.2026 and the court on
25.03.2026 passed the following:

ORDER

This petition is filed by the appellant u/S.5 of the Limitation Act to condone the delay of 95 days to prefer the appeal.

2. The contentions of the petitioner as follows:

The judgment was pronounced on 16.8.2022. The certified copy was delivered on 12.10.2022. The appeal if filed in time ought to have been filed on or before 11.11.2022. As such there occurred a delay of 95 days in filing the above appeal. The delay was caused as the appellant could not travel because of lower back pain and was not in a position to do the needful to get the appeal filed. There is no willful laches on his part, in not filing the appeal in time. Serious issues are involved in the matter and there are wide and substantial points involved in the appeal. Hence the petition.

3. The respondent filed objections as follows:

The petition is not maintainable either under law or on facts. The delay in filing the appeal was due to the willful default and negligence of the appellant. There is no sufficient reason to excuse it. The reason given in the petition is not sufficient. The appellant is an experienced lawyer. His statement that he was unable to file the appeal on time because he was unable to travel

due to back pain is not credible. This is not a sufficient reason to excuse the delay of 95 days. There is no sufficient cause to condone the delay and hence, the petition is to be dismissed.

4. Heard and perused the records.

5. The following points arise for consideration :

(i) Is there is any sufficient ground to condone the delay of 95 days in filing the appeal?

(ii) Is the petition allowable?

(iii) Order as to costs?

6. **Point Nos.1 and 2:** These points are considered together for convenience. The petition is to condone the delay of 95 days in filing the appeal against the Common judgment and decree in OS.No.177/2016 and OS.618/2020 dtd.16.08.2022 of the Principal Munsiff's Court, Cherthala. The petitioner has contended that due to back pain, he could not travel and hence failed to prefer the appeal in time. The respondents have not stated any valid ground to disbelieve the petitioner and hence, for the disposal of appeal on merits, IA can be allowed on terms. Points are found in favour of the petitioner.

7. **Point No.3:** - In view of the finding on point No.1, the IA can be allowed with costs of the respondent.

In the result, IA is allowed on condition to pay costs of Rs.1000/- to the respondent before the next posting date.

Dictated to the Confidential Assistant, typed by her directly to the Computer, corrected and pronounced by me in open court on this the 25th day of March, 2026.

Sd/-
LAKSHMY.S,
SUB JUDGE

Appendix : Nil

Id/-
SUB JUDGE