

IN THE COURT OF THE SUB JUDGE, CHERTHALA

Present: Ms. Lakshmy.S, Sub Judge

Wednesday, the 5th November 2025/ 14th Karthika 1947

IA.1/2025 in AS.45/2025
(Filed on 08.10.2025)

Petitioners/Appellants:

1. The State of Kerala, represented by District Collector, Collectorate, Alappuzha
2. The Tahsildar, Taluk office, Cherthala. P.O, Cherthala
3. The Village Officer, Ezhupunna Village Office, Eramallor.P.O, Cherthala
4. The Assistant Executive Engineer (NH) Division, PWD, Cherthala

By Addl.Govt.Pleader, Cherthala

Counter Petitioners/Respondents:

1. Hareendranath.G, aged 59, S/o R. Gopinatha Menon, Thalappallil House, Thrichattukulam P.O, Cherthala
2. National Highways Authority of India, Project Director, Project Implementation Unit Cochin, National Highways Authority Of India VII/511-B, Neykhali, Mavelipuram Road, Kakkanad, Ernakulam
3. The Secretary, Ezhupunna Grama Panchayat, Eramallor.P.O, Cherthala

**R1 By Adv.T.Jayakrishnan, R2 Exparte,
R3 By Adv.Ambili.P.Madhavan**

This petition coming on for hearing on 04.11.2025 and the court on 05.11.2025 passed the following:

ORDER

This petition is filed by the appellant u/S.5 of the Limitation Act r/w Ss.94(e) and 151 CPC to condone the delay of 248 days to prefer the appeal.

2. The contentions of the petitioner as follows: The first respondent has filed OS 296/2019 before the Munsiff's Court, Cherthala for permanent prohibitory injunction and the same was decreed. The judgment and decree are not legally sustainable and hence the present appeal is filed. The appeal ought to have been filed before 01.02.2025. However, the case file was missing from the GP office, and therefore the appellant could not file the appeal in time. There was no willful negligence or laches on the part of the other appellants and hence the petition.

3. The respondent filed objection that he is not against condoning the delay caused in filing the appeal. But the respondent apprehend that the appellant would further trespass into the decree schedule property and would cause problems to the peaceful enjoyment of the same by respondent. On condition that parties shall maintain status quo with respect to the property involved in the suit, the delay can be condoned.

4. Heard and perused the records.

5. The following points arise for consideration :

- (i) Is there is any sufficient ground to condone the delay 248 days in filing the review petition?
- (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 248 days in filing the appeal against the judgment and decree in O.S.No.296/2019 dtd.25.11.2024 of the Additional Munsiff's Court, Cherthala. The suit was decreed and petitioner is the fourth defendant therein. The petitioner is aggrieved by the judgment which has erroneous findings and the file got misplaced from the office of the Govt.Pleader to file appeal in time. Thus, there occurred delay of 248 days.

7. However, the said contention of the petitioner is not seriously disputed by the respondents and his only apprehension is that the petitioner would interfere with the possession and enjoyment of his property. The petitioner is the Assistant Executive Engineer of PWD Cherthala and the subject matter is with respect to the work undertaken by the NHAI. The petitioner has an arguable case and is aggrieved by the decree and judgment.

8. In **Basheer.M.Picha v. Indian Bank, 2013(2) KLT 951** the Hon'ble High Court has held that even if there was some laches, if explanation does not smack of malafides or is not put forward as a dilatory tactics, Court should lean in favour of the applicant. Hence this court finds that an opportunity can be granted to the petitioner to contest the matter, for a meritorious disposal of the appeal suit.

This Court find it just and proper to allow the application. Points are answered in favour of the petitioner.

9. **Point No.3:** - Considering the facts and circumstances of the case, costs is ordered to the respondents.

In the result, I.A. is allowed and delay is condoned, with costs to the respondents.

Dictated to the Confidential Assistant, typed by her directly to the Computer, corrected and pronounced by me in open court on this the 5th day of November, 2025.

Sd/-
LAKSHMY. S,
SUB JUDGE.

Appendix : Nil

Id/-
SUB JUDGE.