

IN THE COURT OF THE ADDL. DISTRICT JUDGE -I, MAVELIKARA
Present:- Smt.V.G. Sreedevi, Addl. District Judge-I
Saturday, the 05th day of July, 2025/14th Ashadha,1947

I.A. No. 01/2024 in AS.No.08/2024

(Filed on :21.02.2024)

(OS No. 432/2018 on the file of Munsiff's Court, Kayamkulam)

Petitioner/

Appellant

Sreeni.R., S/o Ramachandran Pillai,
Kottinattu House, Peringala Muri,
Kayamkulam Village.

(By Adv. S.Remanan Pillai)

Cr. Petitioners /
Respondents

1. Anandama, W/o Krishna Kurup,
Kottinattu Vadakkathil, Peringala Muri,
Kayamkulam village, (Plaintiff No.1)
2. Dileep Krishnan, S/o Krishna Kurup,
Kottinattu Vadakkathil, Peringala Muri,
Kayamkulam village, (Plaintiff No.2)
Now residing at Adwaitham,
Vettuveni muri, Haripad.P.O.
3. Deepakrishnan, D/o Anandama,
Kottinattu Vadakkathil, Peringala Muri,
Kayamkulam village, (Plaintiff No.3)
4. Santhakumari, W/o Ramachandran Pillai,
Kottinattu Vadakkathil, Peringala Muri,
Kayamkulam village, (Defendant No.1)

5. Sathu, S/o Ramachandran Pillai,
Kottinattu House, Peringala Muri,
Kayamkulam village, (Defendant No.2)
6. Sheela, D/o Santhakumari,
Kottinattu House, Peringala Muri,
Kayamkulam village, (Defendant No.4)

*(R1, R3 By Adv. Muhammed Basheer &
R4, R5, R6 set exparte)*

This petition having been finally heard on 02.07.2025 and the court on 05.07.2025 passed the following:-

ORDER

This application is filed under Sec.5 of the Limitation Act for condoning the delay of 295 days in filing the appeal.

2. In the affidavit in support of the petition, the petitioner alleged as follows:- Petitioner is the appellant who preferred the appeal against the decree and judgment passed on 15.02.2023 in O.S.432/2018 by the learned Munsiff, Kayamkulam. The appellant/petitioner is the third defendant in the suit. The suit was filed on 15.11.2018. On 13.02.2019, the first and fourth defendants appeared and fresh steps were ordered against the second and third defendants in the correct address.

3. On 12.07.2019, summons of defendants 2 and 3 returned with endorsement that the defendants are abroad. Then, the case was posted to 27.09.2019. Thereafter, there was no regular sitting till 28.10.2020. The plaintiffs did not produce the correct address of the defendants 2 and 3, and at last on 16.07.2021, steps were taken in the house address of the said defendants ignoring the report that the defendants are abroad, and the plaintiffs managed to get an entry on the registered postal article as 'refused by the petitioner'. Accordingly, the trial Court set the third defendant *exparte* on 16.09.2021 and proceeded with the case. This petitioner never got the summons in the house address.

4. After getting notice in the execution petition, he came to know that the *exparte* decree was passed against him, hence he entrusted the case file to a lawyer for filing the appeal, but the lawyer did not file the appeal. When he made enquiry with the Advocate, to his surprise, the entire documents were returned. Hence, the appeal could not be filed and there occurred a delay of 295 days, which is sought to be condoned.

5. The application was objected by respondents 1 to 3 and it is contended as follows:- It is true that the appeal is preferred against the decree dated 15.02.2023 in O.S.432/2018. The

plaintiffs took steps in the suit on 16.07.2021 and it was refused by the petitioner. He was available in the station. It is specifically denied that the petitioner was working abroad at the time of service of summons. The reason shown is unacceptable and not reasonable. So, the delay cannot be condoned. The petition is only to be dismissed.

6. Heard both sides.

7. The points that arise for consideration are:

1. Was the petitioner/appellant prevented by sufficient reason in not preferring the appeal on time?

2. Can the delay of 295 days be condoned?

8. **Point Nos.1 & 2:-** The suit O.S.432/2018 was one for mandatory injunction. The petitioner is the third defendant in the suit. The suit was decreed ex parte against the third defendant. According to him, he was abroad during the time when the process was issued and he never received summons as shown in the proceedings. It is seen recorded in the proceedings of the Court that the summons was refused by the petitioner who is the third defendant. The petitioner would say that he was in gulf country and had never received the summons.

9. In fact, when the summons was issued on 12.07.2019, it was returned with an endorsement that the defendants 2 and 3

are abroad. Thereafter, again, on 16.07.2021, summons was issued in the house address of the said defendants and it was returned with an endorsement that it was refused by the petitioner, and at last on 16.09.2021, the Court set the petitioner/ 3rd ex parte.

10. In order to show the fact that the petitioner was in gulf country on 05.09.2021 and he came back to the native place only on 27.10.2021, he has produced the Emergency Certificate issued from Dubai and the date of issuance of the said Emergency Certificate is 05.09.2021. It was valid upto 04.03.2022, and he had an exit on 26.10.2021 and reached the native place only on 27.10.2021. So, it is absolutely clear that during the time when the petitioner was set ex parte on 16.09.2021, he was not available in the native place.

11. The learned counsel for the respondents vehemently contended that, had the petitioner been unauthorizedly in the gulf country, he would have been deported then and there and it could not be proved how long he was there prior to the date of issuance of the Emergency Certificate. The said certificate was seen issued on 05.09.2021. Even then, it can only be presumed that as per the Rules, there are certain formalities to be complied with by a person who is applying for an Emergency Certificate

who lost his passport, and the Consulate General of India in Dubai would issue the Emergency Certificate, after verifying the necessary documents. The said certificate itself would clearly show that the passport of the petitioner was lost and he can apply for a duplicate passport with the said certificate issued by the Consulate General of India. So, the fact that the petitioner was not available in India at the relevant time can be considered as a genuine reason for not accepting the summons. But, how the postal authority gave the endorsement as 'refused by the petitioner' appears to be a suspicious one.

12. Another ground raised to condone the delay was that when the petitioner approached the Advocate for filing the appeal after entrusting the case file, he did not file the appeal, and when the petitioner enquired about the non-filing of the appeal, the case file was returned to him. Because of these reasons, there occurred the delay of 295 days. Hence, he prayed for condoning the delay.

13. The Hon'ble Supreme Court time and again cautioned to consider applications for condonation of delay liberally so as to have disposal of matters on merits. Any how, the first reason shown by the petitioner that he was not in the station appears to be reasonable and genuine, and with respect to the second

aspect, there is no supporting circumstance. Even then, in order to have a meritorious disposal of the matter, I am inclined to allow the petition, but on terms. Hence, these points are found in favour of the petitioner/appellant.

14. In the result,

This petition is allowed on payment of costs of ₹1,000/- by the petitioner to the respondents on or before 11.07.2025, failing which, this petition shall stand dismissed.

For payment of costs and report - 11.07.2025.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this, the 5th day of July, 2025)

Sd/-
V.G. Sreedevi
Additional District Judge-I

Appendix : Nil

Id/-
Additional District Judge-I