

IN THE COURT OF THE ADDL. DISTRICT JUDGE -I, MAVELIKARA
Present:- Smt.V.G. Sreedevi, Addl. District Judge-I
Thursday, the 21st day of November, 2024/30th Karthika, 1946

I.A. No. 01/2023 in AS.No.14/2023

(Filed on :14.02.2023)

(Common Judgment in OS. No. 169/2018 and OS. No. 465/2017 on the file of Munsiff's Court, Kayamkulam)

**Petitioner/
Appellants** : 1. Nirmala Pillai, aged 67 years,
D/o. Sankunni Channar,
Thundil Veedu, Kothappally Thekke Muri,
Kumarapuram Village,
Karthikappally Taluk.

2. Sundharesh Babu, aged 54 years,
S/o. Sankunni Channar, Pottumana Veedu,
Vallikunnam P.O., Thekke Muri,
Vallikunnam Village.
(By Adv. Jayakrishnan. S)

**Respondents/
Respondents** : 1. Suseela Pillai, aged 64 years,
D/o. Sankunni Channar, Pottumana Veedu,
Vallikunnam P.O., Thekke Muri,
Vallikunnam Village.

2. Laya. G. Nath, aged 31 years,
D/o. Suseela Pillai, Pottumana Veedu,
Vallikunnam P.O., Thekke Muri,
Vallikunnam Village.

(R1 by Adv. D. Sudhakaran) (R2 Set exparte)

This petition having been finally heard on 20.11.2024 and the court on 21.11.2024 passed the following:-

ORDER

This petition is filed under Order XLI Rule 3A of CPC to condone the delay of 60 days in filing the appeal.

2. In the affidavit in support of the petition filed by the second appellant on behalf of the first appellant also, it is alleged that the

appeal is preferred against the decree passed in O.S.169/2018. The said suit along with O.S.465/2017 on the file of the Munsiff's Court, Kayamkulam were disposed off by a common judgment dated 30.09.2022. After the decree, the Advocate clerk was engaged in getting the certified copies of the judgment and decree. After getting the certified copies, he failed to inform the said matter to the petitioners/appellants. Only on 08.02.2023, the appellants were informed about the receipt of copies. Hence, there occurred a delay of 60 days in filing the appeal, which is sought to be condoned.

3. The first respondent filed objection with the following contentions:- The petition is not maintainable. The petitioners/appellants were aware of the day to day affairs of the case and they have knowledge about the entire matter from their Advocate's office. Only with intent to deny the enjoyment of the fruits of the decree, the petition filed with intention to file appeal which is only to be dismissed.

4. Heard both sides.

5. The only point that arises for consideration is:

Is the delay of 60 days liable to be condoned, finding that there was sufficient reason for the petitioners for not filing the appeal on time?

6. **The point-** The suit was for declaration, mandatory injunction and permanent injunction. By the common judgment dated 30.09.2022, O.S.169/2018 was decreed and O.S.465/2017 was dismissed. This appeal is preferred against the judgment in

O.S.169/2018.

7. In the affidavit in support of the petition, the petitioners who are the defendants in O.S.169/2018 alleged that they have applied for the certified copies of judgment and decree on time, but the Advocate clerk failed to inform the matter of receipt of the same to them. Because of that reason alone there occurred a delay of 60 days in filing the appeal. The said fact was stoutly denied by the first respondent. In fact, no other reason stated in the petition for the delay. Any how, disposal on merits is the policy of the courts. So, I am of the view that only to have a meritorious disposal of the matter, the said delay can be condoned, but on terms. Hence, this point is found in favour of the petitioners/appellants.

8. In the result,

This petition is allowed on payment of costs of ₹750/- by the petitioners/appellants to the first respondent on or before 28.11.2024, failing which, the petition shall stand dismissed.

For payment of costs and report - 28.11.2024.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this the 21st day of November, 2024).

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

Appendix : Nil

