

**IN THE COURT OF THE ADDL. DISTRICT JUDGE -I,
MAVELIKARA**

**Present:- Smt.V.G. Sreedevi, Addl. District Judge-I
Friday, the 13th day of June, 2025/23rd Jyaishta,1947**

I.A. No. 01/2024 in AS.No.29/2024

(Filed on :04.06.2024)

(OS No. 311/2015 on the file of Munsiff's Court, Kayamkulam)

**Petitioners/
Appellants** : 1. Binu Kumar, aged 47,
S/o Divakaran, residing at
Shibu Bhavanam, Pathiyoor West Muri,
Pathiyoor Village,
Kareelakulangara.P.O, Pin 690572
2. Shymol.S., aged 35, W/o Binu Kumar,
Residing at Shibu Bhavanam, Pathiyoor
West Muri, Pathiyoor Village,
Kareelakulangara.P.O, 690572

(By Adv. I.Mohammed Raffi)

Respondent : Senan Pillai, aged 69,
S/o Sreedharan Pillai, residing at
Thiruvonam Veedu, Pathiyoor East Muri,
Pathiyoor Village,
Kareelakulangara.P.O, 690 572

(By Adv. Ramjith.P & Adv. Varada Vrindavan)

This petition having been finally heard on 04.06.2025 and the court on 13.06.2025 passed the following:-

ORDER

This application is filed under Sec.5 of the Limitation Act for condoning the delay of 2615 days in filing the appeal.

2. In the affidavit in support of the petition, the petitioners alleged as follows:- First petitioner is the first appellant and second petitioner/second appellant is his wife. The suit O.S.311/2015 was filed before the Munsiff's Court, Kayamkulam for specific performance and injunction against the defendants, who are the petitioners/appellants herein, and the suit was decreed. The plaint schedule property belonged to the petitioners. After the agreement between the first petitioner and Mr. Baiju, the plaintiff filed the suit and attached the property. There are sufficient grounds to allow the appeal.

3. The respondent is the friend of the first petitioner, and the mediators and relatives convinced the first petitioner that a settlement can be arrived upon, and later the first petitioner was in the hospital for the treatment of his mother who was a cancer patient. Hence, the delay happened.

4. The first petitioner when realized that the matter could not be settled, filed petitions before the trial court for condoning the delay and to set aside the decree and

judgment. The trial court dismissed both the petitions and CMA could not be preferred against the said order. The first petitioner is the only breadwinner of the family. He could not communicate his lawyer and hence, he was unaware of the status of the case. Hence, the delay of 2615 days occurred, which is prayed to be condoned.

5. The application was objected by the respondent and filed objection contending as follows:- The petition is vague. Nowhere in the petition, it is stated the date on which the suit was decreed. It is also not stated when the petitioners were set *ex parte* in the suit. The decree was passed on 31.01.2017. The petitioners ought to have filed the appeal or the petition to set aside the *ex parte* decree within 30 days. No explanation was given for not filing the petition or appeal on time.

6. The Execution Petition was filed on 22.12.2020. The petitioners who are the judgment debtors appeared in the execution proceedings on 15.02.2021 and after one year on 08.12.2022, they have filed Restoration Petition 6/2022 to set

aside the ex parte decree with a delay of 1882 days. The reason was that the first petitioner was in the hospital in connection with the treatment of his father, but no document produced to substantiate that. In this petition, the reason is the treatment of the mother of the first petitioner, for that also, there is no document. There is no explanation as to why the second petitioner has not come forward to file the petition. The basic principle is that each and every day's delay has to be explained, but in this case, there is no reason, whatsoever, stated to condone such a huge delay. Hence, the petition is only to be dismissed.

7. Heard both sides.

8. The points that arise for consideration are:

1. Were the petitioners/appellants prevented by sufficient reason in not preferring the appeal on time?

2. Can the delay of 2615 days be condoned?

9. **Point Nos.1 & 2:-** The petitioners are the defendants in O.S.311/2015 of the Munsiff's Court, Kayamkulam. The suit was for specific performance and

injunction. The defendants were set *ex parte* before the trial court and an *ex parte* decree was passed. Two reasons have been put forward by the petitioners to condone the delay of 2615 days in preferring the appeal. First is that the respondent being the close friend of the first petitioner, mediators and relatives intervened and there was an attempt to settle the matter. Second is that the mother of the first petitioner was hospitalized for the treatment of cancer and he was in the hospital for attending his mother.

10. On the other hand, the respondent would contend that now, the petitioners approached this Court with vague allegations. Why the petitioners did not attempt to file a petition on time, what was the reason preventing them from contacting their Advocate for filing the petition, when the suit was decreed, when the mediation efforts were taken, what was the period of treatment of the mother in the hospital; all these facts are mentioned in a vague manner. It is also contended by the respondent that these petitioners have appeared in the execution proceedings and after one

year of their appearance before the execution court, petitions were preferred before the trial court to set aside the ex parte decree, with a delay of 1882 days. There, the reason was that the father of the first petitioner was undergoing treatment. Whatever that be, those petitions were dismissed. No appeal is seen preferred against the said orders.

11. The petitioners have produced some documents subsequently with a petition to accept the documents. Copy is also seen served. The documents would show that the mother of the first petitioner, Maniyamma aged 65 years during 2020 was undergoing treatment for carcinoma in Medical College, Kottayam as well as Tiruvalla Medical Mission Hospital. Discharge certificate as well as medical certificate for availing financial assistance etc. have been produced. The case summary is also seen produced. Thereafter, his mother died on 05.01.2021. In order to set aside the ex parte decree, petitions were filed with a delay of 1882 days, in which, the reason stated was that the father

was under treatment, and in support of the said fact, the Death Certificate of the father of the first petitioner is also produced showing that his father died in the Government T.D. Medical College Hospital, Alappuzha. The details of the treatment have not been produced, even then, it is proved that on 01.02.2025, the father of the first petitioner died.

12. Yet another fact brought out was that the first petitioner had donated one of his kidneys and that has been proved through the affidavit of him along with the certificate of MLA, and that affidavit was seen sworn in on 06.08.2014. In 2019, he was undergoing treatment for severe low backache for two months from 26.03.2019, and for proving that fact, discharge summary from Believers Church Medical College Hospital, Thiruvalla is produced. All these facts would constitute the fact that the first petitioner was under severe mental as well as physical stress and that might be the reason why he did not approach the Court for filing petition to set aside the exparte decree in the year 2017 and has not filed CMA when the petition to set aside the exparte

decree was dismissed by the trial court.

13. It is also to be noted that when the learned counsel prepared the affidavit in support of the petition, none of these facts were brought out. Had these facts already been brought out before the trial court with documents, such a contingency would not have arisen because there was sufficient reason at that time also, but that was not proved by producing documents. It is a suit for specific performance of contract and the case of the petitioners is that their house with property is under attachment, and hence, I am of the view that a chance can be given to the petitioners for urging their arguments before Court to establish their case so as to have meritorious disposal of the matter. Considering the said fact alone, I am inclined to allow the petition on a nominal cost of ₹1,000/-. Therefore, these points are found in favour of the petitioners.

14. In the result,

This petition is allowed on payment of costs of ₹1,000/- by the petitioners to the respondent on or before

19.06.2025, failing which, this petition shall stand dismissed.

For payment of costs and report - 19.06.2025.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this, the 13th day of June, 2025).

Sd/-

V.G. Sreedevi
Additional District Judge-I

Appendix : Nil

Id/-

Additional District Judge-I