

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

Present:- Smt.V.G. Sreedevi, Addl. District Judge-I

Saturday, the 20th day of September, 2025/29th Bhadram, 1947

I.A.No.01/2024 in AS.No.71/2024

(Filed on :02.12.2024)

(OS No.58/2020 on the file of Munsiff's Court, Haripad)

Appellant / Defendant : Vinod, aged 41, S/o Viswanathan,
Alampallil House, Pilappuzha Muri,
Haripad Village.
(By Adv.G.Madhu)

Respondent / Plaintiff : Jayakumar, aged 52, S/o Raghavan,
Mangalathu Veettil,
Nangirkulangara Muri,
Pallippad Village
(By Adv. R.Aravindakshan)

This petition having been finally heard on 17.09.2025 and the court on 20.09.2025 passed the following:-

ORDER

This application is filed under Sec.5 of the Limitation Act for condoning the delay of 944 days in filing the appeal.

2. In the affidavit in support of the petition, the petitioner alleged as follows:- The appeal is preferred against the decree and judgment passed by the learned Munsiff, Haripad in O.S.58/2020 dated 28.02.2022. The suit was

decreed and aggrieved by the same, the appeal has been preferred. The case was originally conducted by Adv. Shabu Sreedharan who was practicing in the Hon'ble High Court. But, the case was happened to be decided exparte. Without informing the petitioner, petition to set aside the exparte decree was preferred and again OP (Civil) was filed before the Hon'ble High Court, thereby, grabbed huge amount from the petitioner. The trial Court went wrong in appreciating the pleadings and evidence. The appeal is filed with a delay of 944 days, which is sought to be condoned.

3. The petition was objected and the respondent filed objection contending as follows:- The delay calculated is not correct and there is no bonafides in the petition. The decree was passed on 28.02.2022 and the appeal was preferred only on 08.12.2024. Thus, two years and 341 days have been elapsed after the passing of decree, so there is 1071 days' delay in filing the appeal. The petitioner has accepted the summons, and because of his absence, he was set exparte on 03.12.2021. The petition to set aside the decree was dismissed by the Court.

4. If the Advocate attached to the Hon'ble High Court has not conducted the case, this respondent is not responsible. If the Advocate cheated the petitioner, it is for him to take action against the said Advocate. Written statement was not even filed in this case. The plaint schedule shop-room is in Pallippad Village. There is a notification with respect to Land

Conservancy Town and this property will not come within that notification. This is not a place where BRC is notified.

5. There was rent arrears to the tune of ₹10,05,000/-. So, in order to evade the payment, with this much delay, the appeal is preferred. E.P.22/2022 was filed and the notice was accepted on 14.09.2022 by the petitioner. He has not preferred any objection. There also, he remained exparte. Hence, delivery was effected and the property was handed over to the respondent. From the said property, half of the same was acquired for the development of NH 66. The said building is not in existence now. So, the petition is liable 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 944 days be condoned?***

8. **Point Nos.1 & 2:-** This appeal is preferred against the decree and judgment passed by the learned Munsiff, Haripad in O.S.58/2020 dated 28.02.2022. The petitioner is the defendant in the said suit. According to the petitioner, the Advocate to whom the case was entrusted failed to prosecute the same properly and he was happened to be set exparte. The petition to set aside the exparte decree was also dismissed. It was filed without the knowledge of this petitioner. Again, the learned Advocate approached the

Hon'ble High Court by filing OP(Civil) and that was also not fruitful. The only consequence was that huge amount was received by the said Advocate from the petitioner towards fees. So, the petitioner now wants to assail the said decree, for which, the appeal is preferred with a delay of 944 days, which is prayed to be condoned.

9. On the other hand, the respondent who is the landlord would contend that after the passing of decree, EP was preferred, and before that, the petition to set aside the exparte decree was dismissed by the trial Court. In the EP, notice was served upon the petitioner, but he did not turn up. Moreover, delivery was effected.

10. After effecting delivery, half of the said property was acquired for the development of NH 66 and now, the said building is not in existence. Apart from that, huge amount is pending as arrears of rent. Only to evade the payment of the said amount, the present appeal is preferred.

11. What is the purpose which is going to be served, if the appeal is heard on merits, has not been submitted by the learned counsel for the petitioner/appellant. Since the petitioner was a tenant and since the BRC was not notified in that area, the suit has to be filed for eviction. Even if the appellant succeeded in the appeal what the maximum he can achieve is that the rent arrears need not be paid. Apart from that, he will not be able to get back the premises which is not in existence now.

12. Any how, in order to have meritorious disposal of the case, I am inclined to allow the petition, but on terms, considering the long delay in filing the appeal. Hence, these points are found in favour of the petitioner/appellant.

13. In the result,

This petition is allowed on payment of costs of ₹3,000/- by the petitioner to the respondent on or before 26.09.2025, failing which, this petition shall stand dismissed.

For payment of costs and report – 26.09.2025.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this, the 20th day of September, 2025).

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

Appendix : Nil

Id/-
Additional District Judge-I

26.09.2025:- Costs paid. Petition allowed.

(Pronounced by me in the open Court on this the 26th day of September, 2025)

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

Appendix : Nil

Id/-
Additional District Judge-I