

IN THE COURT OF DISTRICT JUDGE, ERNAKULAM

Present:

Smt.Honey M.Varghese, District Judge

Friday, the 22nd day of December, 2023/1st Pousha, 1945

I.A No.1 of 2023 in CMA No.41 of 2023

Petitioners/Appellants/Plaintiffs:-

1. Habeeb V.P., aged 34 years, S/o.Pareekunju, Vempilly Desom, Valiyaparambil House, Vempilly P.O., Pin - 683565.
2. V.P. Ansar, aged 36 years, S/o.Pareekunju, Vempilly Desom, Valiyaparambil House, Vempilly P.O., Pin - 683565.
3. Ashraf, aged 59 years, S/o. Khalid, Ambittamparambil House, Kanjiramattom, Kanjiramattom P.O., Pin - 682315.
By Adv.s.M/s.N.Retheesh, Suma Retheesh, Shankar Retheesh & Midhun Raj P.R.

Respondents/Respondents/Defendants:-

1. State of Kerala, rep. by the Secretary, Revenue Department, Secretariate, Thiruvananthapuram – 695 003.
2. Deputy Director of Panchayat, Office of the Deputy Director of Panchayat, Civil Station, Thrikkakara - 682 030.
3. Amballoor Grama Panchayat, Kanjiramattom P.O., Pin – 682 315, rep. by its Secretary.
4. Tahsildar Kanayannur Taluk, Taluk Office, Ernakulam, Pin – 682 011.
5. The Village Officer, Amballoor (Group), Kanjiramattom, Kanjiramattom P.O., Pin – 682 315.
6. Honey, aged 36 years, D/o. V.G. Mathew @ Sunny, Vadakethurathil House, Kaniyamparambil, Kanjiramattom, Kanjiramattom P.O., Pin – 682 315, now residing at “Ushas” near Poduval Jn., Shornur, Palakkad, Pin – 679 121.
R1, 2, 4 & 5 by Government Pleader Sri.Manoj G.Krishnan
R3 by Adv.T.K.Ajithkumar
R6 No Vakalath

This petition is filed u/s.5 of the Limitation Act, praying this court to condone the delay of 54 days occurred in preferring the above appeal.

This petition is coming on for hearing before me on 22.12.2023 and the court on the same day, passed the following:-

ORDER

This is an application filed under section 5 of the Limitation Act to condone the delay of 54 days occurred in the filing the above appeal.

2. The averments in the petition, in short, are as follows:- The CMA is filed against the order dated 16.12.2022 in I.A. No. 3 of 2022 in O.S. No. 244 of 2022 on the file of the II Additional Munsiff Court, Ernakulam. The certified copy of the order was received on 09.01.2023. The appeal ought to have been filed on or before 5.02.2023. Immediately on receipt of the certified copy of the impugned, the mother of the petitioners fell ill and she was admitted in the Medical Trust Hospital, Ernakulam. In the meanwhile, the 3rd petitioner was also affected with viral fever for almost 3 weeks and the 1st petitioner was looking after the affairs of mother. Since the 2nd petitioner was not in station in connection with his employment, he could not file appeal. Hence the delay. There is no willful laches or negligence on their part. Hence the petition for condoning delay.

3. R3 appeared through advocate and submitted no objection. R1, R2, R4 ad R5 appeared through GP. R6 called absent.

4. Heard both sides.

5. I have gone through the averments in the petition and considered the submission also. The reason stated for condonation of delay

is that the 1st and 3rd petitioners are with their mother in connection with her treatment, who was admitted at Medical Trust Hospital. Second petitioner was out of station in connection with his employment. Hence the delay was happened.

6. It is true that the basic principle is that no party is supposed to take benefit out of the delayed filing. At the very same time, it is to be borne in mind that Section 5 of the Limitation Act is introduced with an intention to consider the matters meritoriously than technically. Here the reason stated is the illness of their mother. The 3rd petitioner was also affected with viral fever for almost 3 weeks. The respondents submitted formal objection only. Considering the object behind the Limitation Act that the matter is to be considered on merits than technically, the reason stated by the petitioner is accepted and delay is condoned.

In the result, the petition is allowed and the delay of 54 days caused in the filing of the appeal is condoned.

Dictated to the confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 22nd day of December, 2023.

Sd/-

Honey M.Varghese
District Judge

sk/-
Comp.by:

I.A No.1 of 2023 in
CMA 41 of 2023
Order Dated: 22.12.2023