

IN THE COURT OF DISTRICT JUDGE, ERNAKULAM DIVISION

Present:-

Smt. Honey M. Varghese, District Judge

Thursday, 13th day of July, 2023/22nd Ashadha, 1945

I.A.No.1 of 2023 in A.S.No.38 of 2023

Petitioner/Appellant:-

Jameela, aged 82 years, W/o. Abdul Azeez, Saffron, Ernakulam North P.O., PIN- 682 018, represented by her Son and Power of Attorney Holder Noushad, aged 49 years, S/o. Abdul Azeez residing at Saffron, Ernakulam North P.O., Pin-682 018.

By Advs. Sindhu Kamath, Swapna S.K., Rohini Nair, Suraj Kumar D.

Respondents/ defendants:-

Greater Cochin Development Authority, represented by its Secretary,
Greater Cochin Development Authority, Kadavanthra,
Ernakulam- 682 020.

By Adv. D.M.Sajeevan

This petition is filed under Section 5 of the Limitation Act, praying this court to condone 233 days delay caused for filing this appeal.

This petition coming on for hearing on 13.07.2023 and the court on the same day, passed the following:-

ORDER

This petition is filed u/s.5 of the Limitation Act to condone the delay of 233 days occurred in the filing of the appeal.

2. The appeal is filed against the judgment and decree in O.S.No.1193 of

2018 dated 27.06.2022 on the file of the Additional Munsiff Court - I, Ernakulam. It is submitted by the petitioner that after pronouncement of the judgment, though she filed application for certified copy of the judgment, she got it only on 02.08.2022. Thereafter the brother of the petitioner got admitted in the hospital, and he passed away. So, she could not contact her lawyer and make arrangements for filing appeal, and hence the delay occurred in filing the appeal. There is no willful laches on her part.

3. Respondent appeared through counsel and filed objection. They strenuously objected this petition contending that the petition is filed by the petitioner in an experimental way and there is no valid and genuine reasons to condone the delay. They disputed and denied the truthfulness of the explanation offered by the petitioner.

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 the illness of the brother of the petitioner and the consequent delay in contacting the lawyer for filing the appeal. The respondent filed objection stating that there is no valid and genuine reasons to condone the delay.

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 the brother of the petitioner and the delay caused in contacting her counsel for filing the appeal. Though the respondent objected this reason, the fact that her brother passed away is to be considered. 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 233 days caused in the filing of the appeal is condoned.

Pronounced by me in open court on this the 13th day of July 2023.

Sd/-

**Honey M. Varghese,
District Judge**

sk/-
Comp.by:

**I.A.No.01 of 2023 in
A.S.No.38 of 2023
Order dtd --- 13.07.2023**