

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.41 of 2023

Petitioners/Appellants:-

1. Subaida Abdullakutty, aged 68 years, W/o. Late E.Y.Abdullakutty, House No. 44/1204, Asoka Road, Kaloore P.O., Pin- 682 017, Ernakulam.
2. Suhaib Abdullakutty, aged 40 years, S/o. Late E.Y.Abdullakutty, House No. 44/1204, Asoka Road, Kaloore P.O., Pin- 682 017, Ernakulam, represented by the Power of Attorney Holder Subaida Abdullakutty, aged 68 years, W/o. Late E.Y.Abdullakutty, House No. 44/1204, Asoka Road, Kaloore P.O., Pin- 682 017, Ernakulam.
By Advs. Sindhu Kamath, Swapna S.K., Rohini Nair, Suraj Kumar D.

Respondents/Defendants:-

1. Greater Cochin Development Authority, represented by its Secretary, Greater Cochin Development Authority, Kadavanthra, Ernakulam- 682 020.
2. Shihaj Abdullakutty, aged 47 years, S/o. Late E.Y.Abdullakutty, House No. 44/1204, Asoka Road, Kaloore P.O., Pin- 682 017, Ernakulam,
3. Adel Salman, aged 33 years, S/o. Late E.Y.Abdullakutty, House No. 44/1204, Asoka Road, Kaloore P.O., Pin- 682 017, Ernakulam.
By Adv. D.M.Sajeevan

This petition is filed under section 5 of the Limitation Act, praying this court to condone 182 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 182 days occurred in the filing of the appeal.

2. The appeal is filed against the judgment and decree in O.S.No.1049 of 2018 dated 27.08.2022 on the file of the Principal Munsiff Court, Ernakulam. It is submitted by the petitioners that after pronouncement of the judgment, though they filed application for certified copy of the judgment, they got it only on 19.10.2022. Thereafter the petitioner fell ill and was constrained to take bed rest. So, they could not contact their lawyer and make arrangements for filing appeal, and hence the delay occurred in filing the appeal. There is no willful laches on their 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

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 petitioner and the delay caused in contacting their counsel for filing the appeal. Though the reason stated is a feeble one without supporting any document, 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 182 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.41 of 2023
Order dtd --- 13.07.2023**