

**IN THE COURT OF DISTRICT JUDGE, ERNAKULAM DIVISION**

Present:-

Smt. Honey M. Varghese, District Judge

Wednesday, the 7<sup>th</sup> day of August, 2024/16<sup>th</sup> Sravana, 1946

**I.A.No.1 of 2023 in A.S. No.80 of 2023**

**Petitioners/Appellants:-**

1. P.N.Prasannan, S/o.Narayanan, Puthenpurackal, South Paravoor P.O., Paravoor Muri, Manakunnam Village, Pin 682 320.
2. P.N Raju, S/o.Narayanan, Puthenpurackal, South Paravoor P.O., Paravoor Muri, Manakunnam Village, Pin-682 320.
3. Rathy, W/o. late P.N.Raveendran, Puthenpurackal, South Paravoor PO, Paravoor Muri, Manakunnam Village, Pin-682 320.
4. Aysha Raji, D/o. late P.N Raveendran, Puthenpurackal, South Paravoor PO., Manakunnam Village, Pin-682 320.
5. Rajesh, S/o late P.N Raveendran, Puthenpurackal, South Paravoor PO, Mana cunnam Village, Pin-682 320.
6. Soorya, D/o. late P.N Raveendran, Puthenpurackai, South Paravoor P.O. Manakunnam Village. Pin-682 320.
7. Thankamma, W/o. Late Gangadharan, 'Sivakripa House', Kinasserry P.O. Muthukad-Thanneer pathal, Palakkad- 678 707.
8. Gigu, S/o. late Gangadharan, 'Sivakripa House', Kinasserry P.O. Muthukad-Thanneer pathal, Palakkad-678 707.
9. Gigumol, D/o. late Gangadharan, 'Sivakripa House', Kinasserry PO. Muthukad-Thanneer pathal, Palakkad -678 707.
10. Jinu, D/o late Gangadharan, 'Sivakripa House', Kinasserry PO, Muthukad Thanneer pathal, Palakkad -678 707.
11. Pushpa Vijayan. W/o. late P.N Vijayan, Puthenpurackal, South Paravoor PO, Paravoor Muri, Manakunnam Village.
12. Vipini P.V, D/o late P.N. Vijayan, Puthenpurackal, South Paravoor PO, Paravoor Muri, Manakunnam Village.

By Adv.K.K.Sathish

**Respondents/Respondents:-**

1. P.N.Viswambharan, S/o. late Kunjan Narayanan, residing at Thriveni, TV Puram Village, Vaikom Taluk, Pin-686 141.
2. Rema Devi K.P, D/o late Parameswaran, Kappuruveetil house, Udayamperoor, Pin-682307.

3. Rajeswari K.P, D/o late Parameswaran, Kappuruveetil house, Udayamperoor, Pin-682 307.
4. Omana, W/o. late P.N. Sisupalan, residing at Lal Bhavan, South Paravoor P.O, Manakunnam Village, Pin-682 320.
5. Manjith Lal, S/o late P N Sisupalan, residing at Lal Bhavan, South Paravoor P.O, Pin-682 320.
6. Surekha, D/o.P.N Sisupalan, Thymuriyil, North Janatha Road, Palarivattom P.O, Kochi-25.
7. Vinitha P.V, D/o. late P.N Vijayan, Puthenpurackal, South Paravoor P.O, Manakunnam Village, Pin-682 320.

R1 by Adv.Abraham P.George

R2 and 6 by Advs.P.G.Jayashankar, P.K.Reshma, S.Rajeev, Sajana V.H, Shaiju George and Aadersh R.S.Panicker

R7 by Adv.K.K.Sathish

This petition filed under Section 5 of the Limitation Act, praying this court to condone the delay of 1931 days in filing the above Appeal

This petition coming on for hearing on 01.08.2024 and the court on 07.08.2024, passed the following:-

### **ORDER**

This petition is filed under section 5 of the Limitation Act to condone the delay of 1931 days happened in the filing of the above appeal.

2. The petitioners in the above appeal are the defendants 5 to 14 in O.S. No. 1918/2001 of Principal Munsiff Court, Ernakulam. The petitioners filed this appeal against the order in IA No.8182/2010 (FDA) in O.S. 1918/2001 dated 27/02/2018. The petitioners submitted that since the case bundle was misplaced from the office of his counsel during renovation work, he could not file the appeal in time. After a lapse of 333 days, the counsel applied for the certified copy of the order on 28/1/2019. At that time, the period of filing the appeal was expired. The counsel

received the copy only on 27/03/2019. Hence there occurred further delay of 42 days. There is no wilful laches on the part of petitioner in getting the certified copy of the impugned order. Thereafter instead of filing appeal before this court, the petitioners approached the Hon'ble High Court and filed O.P.(C) No. 1191/2019 on 05/04/2019. The entire proceedings before the trial court was stayed by the Hon'ble High Court for a long period of more than 4 years. After having found that the order is appealable, the High Court dismissed the O.P on 14/07/2023. Copy of the judgment is produced herewith. In the above circumstances the petitioners could not file the appeal in time. The appeal ought to have been filed within 30 days from the date of passing of the impugned order. Hence there occurred a delay of 1931 days in filing the appeal. There is no willful laches or omission on their part. Hence prays to allow the petition.

3. The 1<sup>st</sup> respondent appeared through Adv. Abraham P. George and respondents 2 to 6 appeared through Adv. P.G. Jayashankar and they filed objection. They contended that the final decree was passed as per the order in I.A No. 8182/2010 on 27.02.2018. The reason stated by the petitioner for the condonation of delay in filing the appeal is not a tenable reason. There is no truth in the same. On receipt of the certified copy of final decree and sketch the 1<sup>st</sup> respondent herein preferred Execution Petition No.140/2019 before the Munsiff's Court and the petitioners/appellants appeared in the Execution Petition. It is submitted that at that time the appellants preferred O.P (C) No. 1191/2019 before

the Hon'ble High Court and obtained an order of the stay of the execution proceedings. The said O.P was dismissed on 14.07.2023, finding that the order passed in the final decree application is an appealable order. Now the appellants had preferred the appeal with an intention to harass the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent obtained the impugned order for getting partition and separate possession of his legitimate share in the tharawadu property. He is running behind the courts for the last 23 years. All the contentions of the appellants in the memorandum of appeal is untenable and incorrect. The advocate commissioner prepared the sketch of the shares with the pathway in consultation with the parties and with their consent. The advocate commissioner had provided pathway for the purpose of all and the share allotted to the appellants were given as a single portion. The respondent herein had subsequently relinquished his right in the flourmill and the land appurtenant thereto for the settlement of the dispute at the earliest. The appellants herein had taken the benefit of understanding on the part of the 1<sup>st</sup> respondent without any objection. That being so the appellants herein could not turn around and take a contention against the final decree passed in the above case. The appellants failed to explain the reason for the delay in filing the appeal. The attempt of the appellants is to delay the proceedings and thereby harass the respondents. Hence they prayed to dismiss the petition. R2 to R6 also contended that the delay was occurred solely due to the negligence on the part of the petitioners and that cannot be condoned. They also prayed to dismiss the petition.

4. Heard both sides and perused the records.

5. This petition is filed to condone the delay of 1931 days happened in the filing of the above appeal. Since the case bundle was misplaced from the office of his counsel during the renovation, he could not file the appeal in time. After a lapse of 333 days, the counsel applied for the certified copy of the order. At that time the period of filing the appeal was expired. The counsel received the copy only on 27/03/2019. Thereafter instead of filing appeal before this court, the petitioners approached the Hon'ble High Court and filed O.P.(C) No. 1191/2019 on 05/04/2019. The entire proceedings before the trial court was stayed by the Hon'ble High Court for a long period of more than 4 years. After having found that the order is appealable, the High Court dismissed the O.P on 14/07/2023.

6. The learned counsel for the respondents on the other hand strenuously objected the petition stating that there is no bonafides in filing the delay condonation petition. There is no sufficient reason to explain the delay. The attempt of the petitioners is to delay the proceedings and to thereby harass the respondents.

7. I have considered the rival contentions and perused the records. The present appeal is filed challenging the impugned order in IA 8182/2010 in O.S.No. 1918/2001 dated 27.02.2018 on the file of the Principal Munsiff Court, Ernakulam. The petitioners submitted that the certified copy of the order was received only on

28.01.2019 after a lapse of 333 days. The appeal ought to have been filed within thirty days. They have mistakenly approached the Hon'ble High Court thereafter and that added on the delay. But the petitioners could not file appeal within time.

8. As rightly pointed out by the learned counsel for the respondents, no records are produced to substantiate their contention. The respondents contended that on receipt of the certified copy of final order 1<sup>st</sup> respondent herein preferred Execution Petition no. 140/2019 and the appellants appeared in the Execution Petition. The appellants with an intention to delay the Execution Petition preferred O.P before the Hon'ble High Court and the Hon'ble High Court dismissed the petition finding that the order passed in the final decree application is an appealable order. There was delay in filing the appeal. No sufficient explanation was stated by the appellants. The suit was filed in the year 2001 and the I.A for final decree application was filed in the year 2010. The impugned order was passed on 27/02/2018.

9. The decision of the Hon'ble Supreme Court in *Basawaraj & Another vs Special Land Acquisition Officer* reported in AIR 2014 (SC) 746 is applicable in this case. It is held by the Hon'ble Apex Court that the law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the sufficient cause which means an adequate and enough reason which prevented him to approach the

court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

10. It is true that if sufficient cause for explaining the delay is shown, discretion is given to the court to condone the delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. The term sufficient cause should be considered in a liberal manner so as to advance substantial justice. But at the very same time, it is to be borne in mind that the courts are not expected to accept the reason whatsoever stated by the parties and condone the delay lightly.

11. In this case the copy of the impugned order was applied after a considerable delay. The suit is filed for partition. The respondents filed execution

petition to get separate possession. The petitioners appeared in the said proceedings. In the meantime, they filed O.P (Civil) before the Hon'ble High Court. It is settled that the order impugned is an appealable order. The contention that they approached the Hon'ble High Court cannot be taken as a ground to condone the delay as it lacks bonafides. The suit is of the year 2001. The final decree was also passed in the year 2018 after considering the requirements of the parties. If this be the situation it seems that the contention advanced by the petitioner lacks merits.

12. Applying the law laid down by the Hon'ble Supreme Court to the facts of the case on hand and considering the averments in the application for condonation of delay, I am of the considered view that the explanation and cause stated by the petitioners to condone the delay is not a sufficient cause. It can be concluded that the petitioners were not taken care to file the petition within time.

In the result, the petition is dismissed and the delay is not condoned.

Dictated to the confidential Asst. transcribed and typed by her, corrected and pronounced by me in open court on this the 7<sup>th</sup> day of August, 2024.

**Sd/-**

**Honey M.Varghese**  
**District Judge**

sk/-  
Comp.by:

**I.A.No.1/2023 in**  
**A.S. No.80 of 2023**  
**Order dated 07.08.2024**