

**IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),  
MUVATTUPUZZHA**

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)

Monday, the 21<sup>st</sup> day of July, 2025 / 30<sup>th</sup> Ashadha 1947

**I.A.1/2023 in A.S. No. 42/2023**

**Appellants/Plaintiff and Defendant No. 6 :-**

- 1 Sunil aged 55 S/o Pappu, Palliyathu house,  
Punnekkadu Kara, Keerampara Village,  
Kothamangalam Taluk.
- 2 Shaji P.P, aged 66, S/o Pappu,  
residing at Palliyathu @ Krishnapriya house,  
Kumaramangalam Kara, Kumaramangalam Village,  
Thodupuzha Taluk.

***R1 & R2 - By Advs. C.K. Vidyasagar, R.K. Roy &  
Sreelakshmi Saji.***

**Respondents/Defendants 1 to 5 and 7:-**

- 1 Shibu, aged 57 S/o Pappu, Palliyathu house,  
Punnekkadu Kara, Keerampara Village,  
Kothamangalam Taluk.
- 2 Rekha, aged 42, W/o Shibu, Palliyathu house,  
Punnekkadu Kara, Keerampara Village,  
Kothamangalam Taluk.
- 3 Sheela, aged 64, W/o Purushothaman,  
residing at Parukkaran House, Kalady Kara,  
Kalady Village, Aluva Taluk
- 4 Shaila aged about 64 S/o Dhamanan,  
residing at Odiyathuchalil house, Pezhackappilly kara,  
Mulavoor Village, Muvattupuzha Taluk
- 5 Sheela aged about 62 W/o Jeevan, Kalarickal house,  
Neriamangalam Kara, Neriamangalam Village,  
Kothamangalam Taluk

- 6 Nalini aged about 84, W/o Prabhakaran,  
Ambattu house, Pezhackappilly P.O., Paipra Kara,  
Mulavoor Village, Muvattupuzha.

***R1 to R5 - By Advs. N. Ramesh & Raju P V***  
***R6 – Died***

This petition is filed under Section 5 of Limitation Act and is coming on for hearing on 21.07.2025 in the presence of the above counsel and the Court on the same day passed the following:-

### **ORDER**

This petition is filed by the petitioners/appellants in A.S. 42/2023 under Section 5 of the Limitation Act, seeking condonation of 161 days of delay in filing the appeal.

2. According to the petitioners, the first petitioner had entrusted the second petitioner to file appeal against the judgment and decree. The second petitioner contacted the counsel who appeared for them before the trial court. However, due to some difference of opinion, the counsel did not return the case bundle and the copy of the judgment and decree. Thereafter, the petitioners directly filed copy application and obtained the judgment, decree, and the records of the case on 12.06.2023. The first

petitioner, being a national permit lorry driver, he will not be in native place every day due to the nature of his job. Therefore, he entrusted with the second petitioner to approach a counsel and to file appeal. However, due to viral fever, he was unable to contact a counsel and file the appeal in time. Things being so, the second petitioner was admitted in Lisie Hospital on 19.06.2023, due to Coronary Angioplasty to LAD, DM and RCA Management and he was discharged on 24.06.2023. The doctor advised a month's complete rest to the second petitioner. Due to his weak health condition, he was unable to contact the counsel and file the appeal. There is no willful laches from the part of the petitioners. Hence, the petition.

3. Respondents filed objection stating that the petition is not maintainable either in law or on facts. The reasons stated in the affidavit in support of the petition is not correct. No sufficient reason is stated in the petition to condone the delay. Hence, the respondents prayed to dismiss the petition.

4. Both sides were heard.

5. The points that arose for consideration are:

1. Are the petitioners entitled to an order condoning the delay of 161 days occurred in preferring the appeal as that sought for?

2. What is the order as to costs?

6. Point Nos.1 & 2:- I have perused the records. OS. 62/2019 was instituted seeking partition of the plaint schedule property into six equal shares. OS 62/2019 and OS 356/2019 were jointly tried and disposed of by the Munsiff Court, as per the common judgment and decree dated 25.02.2023. OS 356/2019 was decreed, whereas OS 62/2019 was dismissed. The contention of the petitioners is that they were unable to file the appeal in time, as their counsel delayed to return the case bundle and to give the copy of judgment and decree. Furthermore, the first petitioner, being a national permit lorry driver, he will not be in native place every day due to the nature of his job. Therefore, he entrusted the second petitioner to file appeal. However, due to his weak health condition, he was unable to approach a counsel and file appeal in time.

7. The objection of the respondents is that no sufficient reason is stated in the affidavit in support of the petition. No documents produced in support of the petitioners' contention.

8. The copy of medical certificate dated 24.06.2023 issued from Lisie Hospital, Ernakulam shows that the second petitioner was admitted on 19.06.2023 with acute coronary syndrome and discharged on 24.06.2023.

9. In *Collector Land Acquisition, Anantnag v. Mst. Katiji and Others; 1987 KHC 911*, the Hon'ble Supreme Court held that, ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does

not stand to benefit by resorting to delay. In fact he runs a serious risk. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

10. In the light of the above decision, I am of the view that an opportunity can be given to the petitioners to consider their appeal on merit by condoning the delay of 161 days in preferring the same on condition to pay costs.

In the result, petition is allowed on condition to pay costs of ₹1000/- to the respondents.

*Dictated to the Confidential Assistant, typed by her directly into computer, corrected by me and pronounced in the Open Court on this the 21<sup>st</sup> day of July 2025.*

Sd/-

ATHEEK RAHMAN  
CIVIL JUDGE(SENIOR DIVISION)

**APPENDIX : Nil**

Ss/-

Bmm/-

Sd/-

CIVIL JUDGE(SENIOR DIVISION)

**Common Order**  
**in I.A. 1/2023 in**  
**A.S. 42/2023**  
**Dated: 21.07.2025**