

**IN THE COURT OF THE SUBORDINATE JUDGE,
KOTTARAKKARA**

**Present:- Sri. Shanavas. A, Civil Judge (Senior Division)
On Monday the 15th day of December, 2025/24th day of Agrahayana, 1947.**

IA 1/2025

in

AS 5/2025

Between

Petitioner/Appellant:-

Jayaprakash, S/o. Nadarajan,
Charuvila Puthen Veedu,
Pavithreswaram Muri and Village,
Kottarakkara Taluk.

By Adv: Sri. K. Raveendra Kumar
&
Adv: Smt. Akhila. R.C

And

Respondent:-

Jalaja Kumari, D/o. Ratnamma,
Charuvila Veedu,
Pavithreswaram Muri ,
Pavithreswaram Village,
Kottarakkara Taluk.

By Adv: Sri. K. Unnikrishnan Nair.

This petition is filed U/S. 5 of the Limitation Act and S.151 of the CPC, 1908 is coming on for final hearing before me on 02.12.2025 and having stood over for consideration to this day, the court passed the following:

ORDER

This is an order in a petition filed under Section 5 of the Limitation Act, 1963 to condone delay of 92 days in filing the appeal.

2. **The petitioner's case in brief is as follows:-** Petitioner is the appellant and who is the plaintiff in OS 4/2014 before the Munsiff Court, Kottarakara. The suit was dismissed on 28/10/2024. The petitioner has serious objections to the decision of the trial court. The appeal had to be filed on or before 10/01/2025. However the petitioner was in Bangalore with regard to his employment. Therefore the petitioner could not instruct the learned counsel for petitioner to file appeal in time. The petitioner is quite sure that he would win the case in every possibility . The delay 92 days was occurred due to the above reason. If the appeal is not disposed on merit it will cause the prejudice to the interest of the appellant. The non filing of the appeal in time is not due to the wilful latches on the side of the petitioner. Thus the petitioner sought to allow this petition and to condone delay of 92 days .

3. **The respondent filed objection contenting interalia as follows:-** The petition is not maintainable either in law or on facts. The averments in the affidavit are not maintainable. The reason stated for the delay in filing this petition is not true. The suit was decreed on 28/10/2024. The appeal ought to have been filed before 28/11/2024. There is no scope for appeal as the trial court decided the matter judicially and rightly. In fact the delay is more than that of 92 days as stated in the petition. The delay is not properly explained . Hence the respondent sought to dismiss the petition.

4. Heard both sides.

5. The following points arose for consideration:-

1. Whether the petitioner entitled for an order to condone delay of 92 days in filing the appeal?
2. What shall be the order and costs?

6. **Point No.1:-** The appellant herein seeks for condoning delay in 92 days in filing the present appeal stating that after the pronouncement of the judgment by the trial court, he was in Bangalore. Therefore he could not instruct his counsel to file appeal. The reason stated by the petitioner was objected by the respondent stating that it is not sufficient to condone the delay. During argument the learned counsel for the respondent fairly submitted that even though he filed the objection, liberal approach can be taken in this

matter . Therefore on considering the entire facts on either side, it can be seen that even though there are no records produced before this court, the reason stated by the petitioner can be considered as genuine and also considered as sufficient cause for condoning the delay. Therefore the reason can be reckoned and can be acted upon. Therefore I am inclined to allow this petition. Thus point No. 1 is found in favour of the petitioner.

7. **Point No. 2:-** In view of my discussions and findings on point No. 1 the petition is liable to be allowed.

In the result, the petition stands allowed . The delay of 92 days in filing the appeal stands condoned. There is no order as to costs.

(Dictated to the confidential assistant, typewritten by her, corrected and pronounced in open court on this 15th day of December 2025)

Sd/-
SHANAVAS. A
Civil Judge (Senior Division)

Appendix:- Nil.

Sd/-
Civil Judge (Senior Division).

Typed by : Binu.S
Compd.by: Shinu.