

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
KOTTAYAM**

Present: Sri. Manoj M., Principal District Judge

Thursday, 26th day of March , 2026
5th day of Chaithra, 1948

I.A. No.1/2023 in A.S. No.120/2023

(O.S. No.548/2010 of the Principal Sub Court Kottayam)

Petitioner/Appellant/Defendant:-

Satheesan K., aged 59 years,
S/o. Hariswarathamajan Namboothiri,
residing at Krodhamangalam House,
Punnathura West P.O., Ettumanoor Village, Kottayam.

By Adv. Roy George, Adv.Aswathy Roy &
Adv. Thomas Joseph

Respondent/Respondent/Plaintiff:-

M/s. VRL Logistics Limited, A Company registered under the
Indian Companies Act , having its Registered and
Administrative Office at Giriraj Annexe Circuit House Road,
Hubli , Karnataka, Rep. by G. Premkumar, Area Manager,
VRL Logistics Ltd. Area Office, Vadackal Buildings,
Near Eloor Tourist Home, Eloor road, Kootillattu Kara P.O.,
Ernakulam.

By Adv. P.C. Chacko

Petition filed under Section V of the Limitation Act.

This petition is filed to condone the delay of 2016 days in
filing this appeal.

This Petition coming up on for hearing on 16.03.2026 and
the Court on 26.03.2026 passed the following:

ORDER

This is an application filed under Sec.5 of the Limitation Act, by the petitioner, the defendant in OS.548/2010 on the file of the Principal Sub Court Kottayam to condone the delay of 2016 days in filing the appeal against the judgment and decree dated 08.02.2019.

2. According to the petitioner/appellant after the judgment and decree was pronounced, the case file along with judgment and decree was handed over to Adv. Reji Chacko for filing the appeal on 25.03.2019. The said Advocate informed the petitioner that the appeal was filed and the matter could be heard and disposed of as and when it became ripe for disposal. The petitioner believed his counsel and waited. Since the petitioner, who is a 'Parikarmi' in various temples, undertakes tours in connection with his avocation in various temples in Kerala, Tamil Nadu and Karnataka, he was unable to realise the stage of the proceedings before the court. Thereafter, the counsel to whom the case was entrusted died due to severe ailments after prolonged treatments. The petitioner did not receive any information regarding the case till 21.12.2022, on which date he

became aware of the death of his counsel. He approached the wife of his former counsel and she traced out the case file on 10.09.2023 and handed it over to the petitioner on 12.09.2023. Thereafter, he entrusted the matter with the present counsel on 12.09.2023. Thereafter, also the petitioner was under the bonafide belief that the appeal would have been filed. Only when the case records was handed over by the wife of his former counsel on 12.09.2023, the petitioner realized that the appeal was not filed. The appeal ought to have been filed on or before 07.03.2018 as per the date of decree. As such, there is a delay of 2016 days in filing the appeal. The above said delay is not purposeful and there is no laches from the side of the petitioner in filing the appeal. Hence, it is prayed to condone the delay of 2016 days in filing the appeal under Section 5 of the Limitation Act

3. The counsel for the respondent / plaintiff before the trial court entered appearance and filed vehement objection. The delay calculated in filing the appeal is not correct and there is more than 2016 days delay in filing the appeal. The petitioner / appellant has not explained each day's delay in filing the appeal. The averment that the petitioner entrusted the file and the

judgment and decree of the trial court with Adv. Reji Chacko for filing the appeal on 25.03.2019 is false, because the counsel who appeared for the petitioner before the trial court has now filed the appeal. The alleged story of entrustment of the file with Adv. Reji Chacko for filing the appeal is cooked up to circumvent the delay caused in filing the appeal. It is an imaginary story that the petitioner had not enquired about the whereabouts of the file with the counsel to whom he had entrusted it for filing the appeal for a period of more than six years. The petitioner has not even enquired about the number of the appeal which was allegedly filed by his Advocate, Reji Chacko. Reji Chacko was under treatment for severe ailment and he was not attending the advocate office even much prior to the alleged date of entrustment as on 25.03.2019. The averment that the petitioner did not receive any information regarding the case till 21.12.2022 is incorrect and hence denied. The version that the wife of the said Adv. Reji Chacko, traced out the file on 10.09.2023 and handed it over to the petitioner is a false story. The petitioner had entered appearance in E.P. No.62/2020 in O.S. No.548/2010 and even thereafter the petitioner/appellant did not care to file the appeal. As such, there is a delay of more than 2016 days in

filing the appeal. The reasons stated for condonation of the delay are not at all tenable. The long delay caused in filing the appeal is only because of the callous negligence and wilful laches on the part of the appellant and hence the petition is liable to be dismissed.

4. On the side of the petitioner, he was examined as PW1 and Exts.A1 and A2 were marked. On the side of the respondents, Ext.B1, the execution petition filed before the executing court in O.S. No.548/2010 in July 2020, was marked. The stay petition filed by the petitioner before the executing court on 23.09.2023 and the petition filed to set aside the exparte order by the petitioner in the said EP on 23.09.2023 were marked as Exts.B2 and B3.

5. Heard both sides and perused the records.

6. The only point which arises for consideration is;

Whether there is sufficient ground under Sec.5 of the Limitation Act to condone the delay of 2016 days in filing the appeal?

7. **The Point:-** The petitioner, as PW1, affirmed the averments in the petition in the chief affidavit. Ext.A1 is the

death summary of Adv. Reji Chacko and Ext. A2 is his death certificate, evidencing his death on 28.04.2021. In cross-examination, the petitioner admitted that he had first approached the office of Adv. Reji Chacko in March 2019. There are other advocate offices near the office of Adv. Reji Chacko. He pleaded ignorance of the suggestion that Adv. Reji Chacko had stopped practice due to illness even prior to 2018. The suggestion that Adv. Reji Chacko was not having active practice in 2019 was denied. The suggestion that he received notice in EP No.62/2020 in the year 2020 was denied by him. He entrusted Adv. Roy George to file this appeal only in 2022. Reji Chacko died in December 2022 and he knew about the death of Reji Chacko after two weeks of the same. He stated that after he entrusted Adv. Reji Chacko to file the appeal, he used to make enquiries with him through phone. According to him, the file was traced out by the wife of Adv. Reji Chacko in the year 2023 and he does not know the exact date. He stated that he received knowledge about the death of Reji Chacko in December 2022.

8. The counsel for the petitioner/appellant contended that after the decree, the petitioner had entrusted the file to Adv. Reji Chacko for filing the appeal. The appellant is a person who has

to undertake continuous travel. He was under the bona fide belief that Reji Chacko had filed the appeal. However, Reji Chacko died and he knew about the death of Reji Chacko only in 2022. Thereafter, the appellant got back the case file and entrusted it to his former counsel for filing appeal. It was also contended that from March 2020 till 2022, the covid pandemic was prevalent and the said period may be condoned.

9. The counsel for the respondent contended that the EP in the above suit was filed before the executing court in the year 2020. The petitioner was set ex parte, and thereafter he concocted a story and filed this delay-condonation petition. The reasons stated in the delay-condonation petition are totally false and bereft of any logic and ordinary human conduct. There is a delay of more than 2016 days in filing the appeal. The petitioner has not explained each and every day's delay. Moreover, the version of the petitioner that he entrusted the file to his counsel for filing the appeal and that he had not even enquired about the appeal number until 2022 cannot be believed for a moment. It was contended that the delay had commenced before the covid pandemic.

10. Admittedly, the trial court had passed the judgment and decree on 08.02.2019. The version of the counsel for the petitioner that, though he had entrusted Adv. Reji Chacko to file the appeal on 25.03.2019, Adv. Reji Chacko failed to file the appeal and it was only after his death in 2022 that it was revealed that the appeal had not been filed, is improbable and untrustworthy. A person who has contested a suit before the trial court, in normal circumstances, would definitely enquire about the appeal number from the counsel to whom he entrusted the matter for filing the appeal. Moreover, Adv. Reji Chacko had died, as per the death certificate, on 29.04.2021. Thereafter also the petitioner has filed the appeal after inordinate delay of about two years with a petition for condonation of delay. The version of the petitioner that he realized the appeal had not been filed only when the wife of Adv. Reji Chacko traced out the file and handed it over to him in 2023 is not believable, in view of the fact that a person who has entrusted an advocate to file an appeal would definitely contact him and enquire about the whereabouts of the appeal. Moreover, it is revealed that the E.P. was filed in the year 2020 itself. The petitioner also stated that he used to enquire about the status of the appeal with the

counsel over the phone, yet he did not know that the appeal had not been filed. This version is also wholly unbelievable.

11. A litigant is expected to show due diligence and to enquire whether the appeal has been filed by ascertaining the appeal number within a reasonable time. In this case, though the judgment was passed in the year 2019, the petition to condone delay was filed only in 2023. It is evident that the petitioner had not made any enquiry whether the appeal was filed or not. It is obvious, as he did not obtain the appeal number from his former counsel. Thus, a person of ordinary prudence, exercising due diligence, should have understood that his counsel had not filed the appeal within time, after not obtaining the appeal number even after delay of two or three years. In the said circumstances, I am of the view that the version of the petitioner, that due to the fact that his counsel, Adv. Reji Chacko, did not file the appeal and thereafter the said Adv. Reji Chacko died, the delay occurred is devoid of any bona fides.

12. In the decision reported in **Leelamma Augustine v. Lisie Medical Institutions** [2025 KHC OnLine 1173], the Hon'ble High Court of Kerala held as follows: -

"It is very easy for litigants to lay blame on their counsel, when such person is not on record and to offer them as scapegoats for there own deliberate actions. If this court is to grant any imprimatur to this, it would sound the death knell of the litigative system, particularly when the Original Suit was filed as early as in the year 2017."

13. Hence, it is settled law that delay cannot be condone in a routine manner when the litigant has showed wilful laches and negligence.

14. In **Esha Bhattacharjee v. Raghunathpur Nafar Academy**, [2013 (12) SCC 649], the Hon'ble Apex Court, while summarising the principles applicable while dealing with an application for condonation of delay, held that the concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. The Apex Court held further that there is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted, whereas to the latter it may not be attracted. That apart, the first one warrants strict approach, whereas the second calls for a

liberal delineation. Para.21 of the judgment reads thus;

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. There should be a liberal, pragmatic, justice - oriented, non - pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact - situation.

21.3. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant

so that in the ultimate eventuate there is no real failure of justice.

21.7. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

15. In **Rafeek and Another v. K. Kamarudeen and Another**, 2021 (4) KHC 34 : (2021) 2 RCR (Rent) 223 : 2021 AIR CC 2752, a Division Bench of the Kerala High Court held that, though the expression 'sufficient cause' employed in S.5 of the Limitation Act, 1963, is adequately elastic to enable the courts to apply the law in a meaningful manner, which subserves the ends of justice, as held by the Apex Court in *Collector Land Acquisition, Anantnag and Another v. Mst. Katiji and Others*, 1987 (2) SCC 107, the concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. As held by the Apex Court in *Esha Bhattacharjee (supra)*, inordinate delay, which attracts doctrine of prejudice, warrants strict approach, whereas a delay of short duration or few days, which may not attract doctrine of prejudice, calls for a liberal delineation.

16. Though from 2020 March till 2022, the covid pandemic was prevalent, the time to file appeal began to run before such period and the petitioner is not entitled for the benefit of relaxation. Thus, it can only be held that the inaction on the part of the petitioner in pursuing the litigation would amount to wilful and gross negligence and there is no bona fides in the present version put forward. Under normal circumstances, a prudent litigant would never omit to enquire about the appeal number from the counsel to whom he had entrusted the filing of the appeal for a period of about three or four years. Thus, I am of the considered view that there was no sufficient ground for not filing the appeal within time. Point is thus found against the petitioner.

17. In the circumstances of the case, it can only be held that there was wilful and gross negligence on the part of the petitioner in filing the appeal. Thus it is found that the petition is devoid of merit and is liable to be dismissed.

In the result, the petition is dismissed.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected by me and pronounced in open Court, on this the 26th day of March, 2026.

Sd/-
Manoj M.
District Judge

APPENDIX :

Exhibits Marked for the Petitioner:-

- A1 : 28.04.2021 Treatment Record (Bharath Hospital)
A2 : 17.07.2024 Death Certificate of Regi Chacko,
issued from Kottayam Municipality

Exhibits Marked for the Respondent:-

- B1 : 23.07.2020 Copy of E.P filed, E.P No. 62/2020
B2 : 23.09.2023 Copy of Stay petition
B3 : 23.09.2023 Copy of Exparte set aside petition

Court Exhibits:- NIL

Witness Examined for the Petitioner:-

- PW1 : 18.12.2025 Satheesan

Witness Examined for the Respondent:- NIL

Id/-
District Judge.

// True Copy //

Copied by :

Compared by :

Sd/-
Manoj M.
District Judge