

IN THE COURT OF THE MUNSIFF, ADOOR

Present: Smt. Sherin Y.T, Munsiff.

Monday the 18th day of May, 2026
28th day of Chaithra, 1948 (S.E)

IA No.2/2026 and IA 3/2026 in O.S. No.408/2014

IA No.2/2026 in O.S. No.408/2014

Between:-

- | | | | |
|---|--|--------|------------------------|
| 1 | M.Viswanadhan, Viswa Nivas,
Mangaram Muri, Pandalam Village. | }
} | Petitioners/plaintiffs |
| 2 | Valsala, Viswa Nivas,
Mangaram Muri, Pandalam Village. | }
} | |
| 3 | Thankamani, Panackal Padinjattethil,
Mangaram Muri, Pandalam Village. | }
} | |

(By Adv. M.Vijeshkumar)

And:-

- | | | | |
|--|---|--------|----------------------|
| | Pushpakumari,
Panackal Padinjattethil (Sunil Nivas),
Mangaram Muri, Pandalam Village. | }
} | Respondent/defendant |
|--|---|--------|----------------------|
- (By Adv.C.K.Thomas)

IA 3/2026 in O.S. No.408/2014

Between:-

- | | | | |
|---|---|--------|------------------------|
| 1 | M.Viswanadhan, Viswa Nivas,
Mangaram Muri, Pandalam Village. | }
} | Petitioners/plaintiffs |
| 2 | Valsala, Viswa Nivas,
Mangaram Muri, Pandalam Village. | }
} | |
| 3 | Thankamani,
Panackal Padinjattethil,
Mangaram Muri, Pandalam Village. | }
} | |

(By Adv. M.Vijeshkumar)

And:-

Pushpakumari,	}
Panackal Padinjattethil (Sunil Nivas),	} Respondent/defendant
Mangaram Muri, Pandalam Village.	}
	}
(By Adv.C.K.Thomas)	

These petitions are coming on for hearing on 18.05.2026 and on the same day the court passed the following:

COMMON ORDER

I.A. No. 2/2026 is filed by the plaintiffs to set aside the order dated 15.11.2024, by which the suit was dismissed for default, and to restore the suit to file. I.A. No. 3/2026 is filed by the plaintiffs to condone the delay of 410 days in filing the application to set aside the said order of dismissal. Since both applications arise from the same order and are closely connected, they are heard together and disposed of by this common order.

2. ***The petition averments, in brief, are as follows*** : The petitioners are the plaintiffs in the suit. The suit is one for permanent prohibitory injunction and other consequential reliefs. According to the petitioners, plaint A schedule property belongs to plaintiffs 1 and 2 as per sale deed No. 162/2002 of Pandalam SRO and plaint B schedule property belongs to the third plaintiff as per settlement deed No. 3461/1995 of Pandalam SRO. It is their case that plaint C schedule pathway is an ancient pathway used for access to plaint A and B schedule properties. According to them, the said pathway was having an approximate width of 8 feet and later, on the basis of an understanding with the defendant, an additional width of 4 feet was also surrendered by the defendant after receiving ₹20,000/- from Sabu, the son of the third plaintiff. The petitioners further contend that the said pathway is included in the asset register of Pandalam Municipality and that the pathway is being used by the public also. The petitioners further

contend that the first plaintiff could not appear before the Court and could not take timely steps in the suit as he was undergoing treatment for prostate gland ailment at the Military Hospital, Thiruvananthapuram. It is also stated that the second plaintiff, who is the wife of the first plaintiff, was with him for his care and treatment, and that the third plaintiff is aged and was also under treatment. According to the petitioners, due to the above circumstances, they could not approach their counsel in time and could not take steps to restore the suit within the prescribed period. It is contended that the default and delay were not wilful or deliberate. Hence, the petitioners seek to condone the delay of 410 days and to restore the suit to file.

3. ***The respondent/defendant filed objection*** contending that the petitions are not maintainable either on facts or in law. According to the respondent, the suit was dismissed for default on 15.11.2024 and the present applications are filed after a long delay. It is contended that the reasons stated by the petitioners are vague and unsupported by documents. The respondent also contends that the petitioners had earlier filed I.A. No. 1/2026 for restoration of the suit and the said application was dismissed as withdrawn on 29.01.2026. According to the respondent, the present application is the second restoration petition and is barred. It is further contended that no sufficient cause is shown either for non-appearance on 15.11.2024 or for the delay in filing the restoration application. Hence, the respondent prays for dismissal of both applications.

4. Heard both sides.

5. The following points arise for consideration:

1. Whether the petitioners have shown sufficient cause to condone the delay of 410 days in filing the application to set aside the order of dismissal dated 15.11.2024?

2. Whether the order of dismissal dated 15.11.2024 is liable to be set aside and the suit is liable to be restored to file?
3. Reliefs and costs.

6. **Point Nos. 1 and 2** : Point Nos. 1 and 2 are considered together, as they are closely interconnected. The suit was dismissed for default on 15.11.2024. The petitioners have filed I.A. No. 2/2026 to set aside the order of dismissal and I.A. No. 3/2026 to condone the delay of 410 days in filing the restoration application.

7. The main reason stated by the petitioners is that the first plaintiff was undergoing treatment for prostate gland ailment at the Military Hospital, Thiruvananthapuram during the relevant period. It is also stated that the second plaintiff was with him for his care and that the third plaintiff was aged and under treatment. According to the petitioners, due to the said circumstances, they could not take timely steps to restore the suit.

8. The respondent seriously disputes the explanation offered by the petitioners and contends that no medical records are produced. It is also contended that the reasons are vague and that there is no proper explanation for the entire period of delay. The respondent further contends that the earlier restoration application filed as I.A. No. 1/2026 was dismissed as withdrawn and therefore the present application is not maintainable.

9. It is true that the delay involved is not insignificant. It is also true that the petitioners have not produced detailed medical records to show the exact period of treatment. However, while considering an application for condonation of delay and restoration of a suit dismissed for default, the Court is expected to adopt a liberal and justice-oriented approach, particularly when valuable civil rights relating to immovable property and access are involved. The expression "sufficient cause" has to receive a liberal construction so as to advance substantial justice,

provided the Court is satisfied that the default was not deliberate or mala fide.

10. In the present case, the suit is of the year 2014 and it relates to a dispute concerning access/pathway and consequential reliefs. Even though the suit is dismissed for default, the counter claim is still pending . Therefore, restoration of the suit will enable the Court to adjudicate the entire dispute between the parties comprehensively and on merits. If the suit is not restored, the plaintiffs will be deprived of an opportunity to adduce evidence in support of their claim. On the other hand, any inconvenience caused to the respondent due to the delay can be compensated by imposing reasonable costs.

11. The contention of the respondent that the petitioners had earlier filed I.A. No. 1/2026 and that the same was dismissed as withdrawn has also been considered. The said application was not decided on merits. The withdrawal of the earlier application, by itself, need not stand in the way of considering the present applications, especially when the present applications are accompanied by a prayer to condone the delay and when the Court is satisfied that the matter deserves adjudication on merits. The bar under Order XXIII Rule 1(4) CPC, which relates to withdrawal and abandonment of suits or claims, cannot be mechanically applied to defeat a request for restoration of a suit dismissed for default, particularly when the earlier restoration application was not adjudicated on merits.

12. The respondent has also raised the contention that the application is barred by limitation. In view of the delay condonation application filed as I.A. No. 3/2026, the said objection has to be considered along with the sufficiency of the cause shown. The explanation offered by the petitioners is mainly based on the illness and treatment of the first plaintiff, the presence of the second plaintiff along with him, and the age and illness of the third plaintiff. Though the explanation is not supported by elaborate documentary evidence, it cannot be said

that the explanation is wholly unbelievable. There is nothing to show that the petitioners deliberately allowed the suit to be dismissed or that the delay was caused with any mala fide intention.

13. It is settled that rules of limitation are not meant to destroy the rights of parties, but to ensure that parties approach the Court without undue delay. At the same time, when the refusal to condone delay would result in shutting out a party from having the matter decided on merits, and when the opposite party can be compensated by costs, the Court can take a liberal approach. The ultimate attempt of the Court must be to decide the lis between the parties on merits rather than terminating the proceedings on technical grounds.

14. In the present case, considering the nature of the suit, the pendency of counter claim, the explanation offered by the petitioners, and the fact that no final adjudication on merits has taken place, this Court is of the view that an opportunity can be granted to the petitioners to prosecute the suit. However, the long delay and the inconvenience caused to the respondent cannot be ignored. Therefore, the delay can be condoned and the suit can be restored only on payment of costs.

15. Hence, this Court finds that the petitioners have shown sufficient cause, in the facts and circumstances of the case, to condone the delay of 410 days. Consequently, the order dated 15.11.2024 dismissing the suit for default is liable to be set aside and the suit is liable to be restored to file, subject to payment of costs. Point Nos. 1 and 2 are found in favour of the petitioners.

In the result, both petitions are allowed as follows:

1. I.A. No. 3/2026 is allowed and the delay of 410 days in filing the application to set aside the order of dismissal dated 15.11.2024 is condoned.

2. I.A. No. 2/2026 is allowed and the order dated 15.11.2024 dismissing the suit for default is set aside.
3. This order shall be subject to payment of cost of ₹ 3000/- by the petitioners to the respondent within 5 days from the date of this order.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 18th day of May, 2026.

SHERIN. Y.T,
MUNSIFF.

Appendix:- Nil

MUNSIFF.

Typed by: Saji.K
Compared by:

Fair/Copy of Common Order in
IA No.2/2026 and IA 3/2026
in O.S. No.408/2014
Dated: 18.05.2026.