

**IN THE COURT OF THE SUB JUDGE, NEDUMANGAD**

**Present : Smt. Rajasree. C.R, Civil Judge (Senior Division)**

**On Monday 6<sup>th</sup> April 2026/ 16<sup>th</sup> Chaithram 1948**

**I.A 2/2025 in AS 31/2025**

**Petitioners/ Appellants**

1. Babu, S/o. Achuthan Kani, aged 58 years, Arathi Bhavan, Mamoodu Kurupuzha Village, Nedumangad Taluk.
2. Sudhakumari, D/o. Damodaran Kani, aged 51 years, Vishnu Bhavan, Vazhamala, Panavoor Village, Nedumangad Taluk.

**(By Adv. Sri.S.D. Ajith)**

**Counter Petitioners/  
Respondents**

1. Santhakumari, W/o. Krishnankutti Kani, aged 66 years, Krishna Vilasam Veedu, Mamoodu, Panayamuttom. P.O., Panavoor Village, Nedumangad Taluk.
2. Prasanth, S/o. Krishnankutti Kani, aged 38 years, Krishna Vilasam Veedu, Mamoodu, Panayamuttom. P.O., Panavoor Village, Nedumangad Taluk.
3. Krishnapriya, D/o. Krishnankutti Kani, aged 35 years, Krishna Vilasam Veedu, Mamoodu, Panayamuttom. P.O., Panavoor Village, Nedumangad Taluk.
4. Savithri, aged 53 years, W/o. Uthaman, Thadatharikathu Veedu, Ayanimoodu, Mamoodu, Panavoor Village, Nedumangad Taluk.

- 5 Reshma, aged 26 years, D/o. Uthaman, Thadatharikathu Veedu, Ayanimoodu, Mamoodu, Panavoor Village, Nedumangad Taluk
6. Swapna, aged 38 years, D/o. Uthaman, Thadatharikathu Veedu, Ayanimoodu, Mamoodu, Panavoor Village, Nedumangad Taluk
- 7 Renju, D/o. Santha, aged 41 years, Charivil Veedu, Vazhamala, Panavoor Village, Nedumangad Taluk.

**( Exparte)**

This petition having been finally heard on 26/03/2026 and the court on 06/04/2026 passed the following:-

**ORDER**

This application is filed under section 5 of the Limitation Act to condone the delay of 140 days in preferring the appeal.

2. Petition averments, in brief, are stated as follows:- The petitioners are the appellants in the appeal. They are aggrieved by the decree and judgment in OS 875/2018 of the Court of Munsiff, Nedumangad. The first appellant is conducting the case for himself and on behalf of the other appellants. Due to heavy back pain after spinal cord surgery, the first appellant/first petitioner was not in a position to prefer the appeal in time. There occurred a delay of 140 days in preferring the appeal. The delay occurred due to unavoidable circumstances

and due to the illness of the first petitioner/appellant. There is every chance of a favourable decision in favour of the appellants. Thus, this application is filed to condone the delay of 140 days.

3. Notices to the first, the second and the third respondents returned unclaimed. It amounts to due deemed service. No vakalath was filed for them. Therefore, the first, the second and the third respondents were called absent and set ex parte. Notices to R4, R5, R6 and R7 were duly served. No vakalath seen filed for them and on 06.12.2025, there was no representation for them. Thus, R4 to R7 were called absent and set ex parte.

4. Heard the learned counsel for the petitioners.

5. This application is filed by the appellants under section 5 of the Limitation Act to condone the delay of 140 days in preferring the appeal. The affidavit filed discloses that the first petitioner was contesting the matter for himself and on behalf of the other petitioners and as he was laid up due to spinal cord surgery. Due to this reason, he could not prefer the appeal in time.

6. At this juncture, let me consider section 5 of the Limitation Act, 1963, which reads thus: - *Extension of prescribed period in certain cases. - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

*Explanation. - The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section. If Section 5 of the Limitation case can be invoked in a case where the party shows sufficient cause for the delay.*

7. The expression 'sufficient cause' as appearing in S.5 of the Indian Limitation Act, 1963 is not defined and has to be given a liberal construction so as to advance substantial justice. Unless respondents are able to show mala fide on the side of the petitioners in not approaching the Court within the period of limitation, generally as a normal rule, delay should be condoned. Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The Apex Court has repeatedly held that a liberal and justice - oriented approach need to be adopted in the matters of condonation of delay so that the substantive rights of the parties are not defeated only on the ground of delay. In short, the power under S.5 of the Limitation Act, 1963 must be exercised in a very meaningful manner which will serve the ends of justice.

8. In the case of **Ganeshraju S. (D) through LRs. and another v. Nasasimha (D) through L.Rs and others** , 2012 KHC 4227 it is held that "*in fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the Courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient*

*cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter".*

9. In **Ram Nath Sao Alias Ram Nath Sahu and Others v. Gobardhan Sao and Others**, 2002 (3) SCC 195 The Hon'ble Apex Court has held that *"But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over - jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine - like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and / or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."* This decision makes it clear that a hyper-technical view regarding the explanations furnished shall not be taken by the court."

10. In the case at hand, the respondents have not turned up and they have not shown anything that would go to show that it was only due to the mala fides the petitioners have not approached the court in time. There is nothing that would show that the petitioners were negligent and callous in prosecuting the

matter. The affidavit filed by the petitioners would go to show that it was due to the illness of the first petitioner, the petitioners could not approach before the court. Having satisfied with the reason stated in the affidavit, I am of the view that the delay in this case which is not an inordinate delay can be condoned and this court can exercise discretionary relief under section 5 of the Limitation Act, as the petitioners have shown sufficient cause for the delay that occurred. *In the light of these discussions, I am of the view that this application can be allowed.*

**In the result, this application is allowed.** The delay of 140 days in preferring this application is condoned. There is no order as to costs, as respondents have not entered appearance on receipt of notices.

*(Prepared through Adalath AI, corrected by me and pronounced in Open Court on this, the 6<sup>th</sup> day of April, 2026).*

RAJASREE.C.R,  
*Civil Judge (Senior Division)*

*Appendix: NIL*

*Civil Judge, Senior Division*

*Typed by :BR*

*Compd by :RPN*