



2026:KER:48343

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

WEDNESDAY, THE 1ST DAY OF JULY 2026 / 10TH ASHADHA, 1948

OP(C) NO. 2325 OF 2025

AGAINST THE ORDER DATED 30.07.2025 IN IA 1/2024 IN CA
NO.25 OF 2024 OF DISTRICT COURT (COMMERCIAL APPELLATE COURT),
ERNAKULAM

PETITIONER(S)/RESPONDENTS/DEFENDANTS 2,5,6 & 1:

- 1 M/S PERIYAR CHEMICALS LTD
A COMPANY INCORPORATED UNDER THE PROVISIONS OF
COMPANIES ACT, 1956 AND HAVING ITS REGISTERED
OFFICE AT BINANIPURAM PO, EDAYAR VILLAGE, ALUVA
TALUK, ERNAKULAM, KERALA. REPRESENTED. BY MANAGING
DIRECTOR, PIN - 683502
- 2 SIJOY VARGHESE
AGED 44 YEARS
S/O T.V. VARGHESE, DIRECTOR, M/S PERIYAR CHEMICALS
LTD, HAVING REGISTERED OFFICE AT BINANIPURAM PO,
EDAYAR VILLAGE, ALUVA TALUK, ERNAKULAM, PIN -
683502
- 3 SREENARAYANAN CHITTAYIL
DIRECTOR, M/S PERIYAR CHEMICALS LTD, HAVING
REGISTERED OFFICE AT BINANIPURAM PO, EDAYAR
VILLAGE, ALUVA TALUK, ERNAKULAM., PIN - 683502
- 4 K.P. ROY
AGED 57 YEARS
S/O LATE KOYIKARA PAULO PAPPU, AGED 57, RESIDING
AT KOYIKARA HOUSE, NEW LANE, VIO-123,
THOTTAKATTUKARA PO, ALUVA WEST VILLAGE, ALUVA
TALUK, ERNAKULAM, KERALA., PIN - 683108

BY ADVS.
SRI.SHAIJAN C.GEORGE
SMT.ARLISS TRENCY ANTONY



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SHRI.VINAI JOHN
SHRI.AJAY RAMESH

RESPONDENT(S)/PETITIONER/PLAINTIFF & DEFENDANTS 3 & 4:

- 1 KURIAN C. IPE
AGED 66 YEARS
S/O LATE N.K. IPE, RESIDING AT 22B, HEERA VAASTU
GRAMAM, RAJAGIRI VALLEY P.O., KAKKANAD VILLAGE,
KANAYANNOOR TALUK, ERNAKULAM-, KERALA, PIN - 682039
- 2 FEDERAL BANK LTD
VARAPUZHA BRANCH, ERNAKULAM DISTRICT, REPRESENTED
BY BRANCH MANAGER., PIN - 683517
- 3 PUNJAB NATIONAL BANK,
DURBAR HALL ROAD, ERNAKULAM, REPRESENTED BY BRANCH
MANAGER., PIN - 682016

BY ADVS.
SMT.MEENA.A.
SHRI.LEO GEORGE
SHRI.DEEPAK JOY.K.
KUM.P.S.LAKSHMI
SMT.ANGEL JACOB
SMT.SNEHA J. POONELIL
SRI.T.KRISHNANUNNI (SR.)
SRI.VINOD RAVINDRANATH
SMT.M.R.MINI
SHRI.ANISH ANTONY ANATHAZHATH
SHRI.THAREEQ ANVER
SMT.NIVEDHITHA PREM.V
SRI.ANANTHAKRISHNAN A. KARTHA
SMT.MARIYA JOSEPH
SMT.AMEERA JOJO
SHRI.STEPHEN V THOMAS

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01.07.2026,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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EASWARAN S., J

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Dated this the 1st day of July, 2026

J U D G M E N T

The question raised before this Court is whether Section 5 of the Limitation Act, 1963 is applicable to an appeal preferred before the District Court (Commercial Appellate Court), Ernakulam, under the provisions of Commercial Courts Act, 2015 (for short 'the Act').

2. The brief facts necessary for the disposal of this case are follows:-

C.S. No.19/2022 is a suit by the 1st respondent for recovery of money. By judgment dated 07.11.2023, C.S No.19/2022 was decreed by the Principal Sub Court, North Paravur against the 1st defendant alone. The suit against defendants 2 to 6 was dismissed, The plaintiff applied for the certified copy on 13.11.2023. On



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21.03.2024, the certified copy was received. Going by Section 13 of the Commercial Court Act, 2015, the appeal ought to have been filed on or before 20.05.2024, since the time limit for such appeal is 60 days. The appeal, if any, ought to be preferred before the Commercial Court (Appellate Division), which is the District Court. However, on 24.08.2024 an appeal was preferred before this Court as unnumbered R.F.A of 2024(Filing No.232/2024). This appeal was kept pending on the files of this Court till October 2024 and by order dated 01.10.2024, this Court ordered the return of appeal, along with the court fee and the judgment, for presentation before the appropriate forum. On 22.10.2024, the appeal was presented along with an application to condone the delay of 168 days before the Appellate Court. The Appellate Court by Ext.P5 order condoned the delay on the ground that 1st respondent herein, was diligently prosecuting the matter, and by



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mistake had preferred an appeal before this Court as Unnumbered R.F.A of 2024 (Filing No.232/2024). The order of the District Court (Commercial Appellate Court), Ernakulam, condoning the delay in filing the appeal is challenged in this present original petition.

3. Heard Shri.Shaijan C. George, the learned counsel appearing for the petitioners and Shri.T.Krishnanunni, the learned Senior Counsel, assisted by Smt.Meena A., the learned counsel appearing for the 1st respondent.

4. Shri.Shaijan C. George, the learned counsel appearing for the petitioners contended that going by the scheme of the Commercial Courts Act, 2015, an appeal beyond the period of 60 days cannot be entertained. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in **Government of Maharashtra (Water Resources Department) Rep. by Executive Engineer v. M/s**



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Borse Brothers Engineers and Contractors Pvt. Ltd.

[2021 (6) SCC 460] and **Jharkhand Urja Utpadan**

Nigam Ltd and Another v. Bharat Heavy Electricals

Ltd. [2025 SCC OnLine SC 910]. He pointed out that the

purpose of fixing a particular time for preferring an

appeal against the judgment and decree of the

Commercial Court is to avoid delay in disposal of the

case. Therefore, once a prescribed limit of 60 days is

provided under the statute, any appeal beyond the said

period must be viewed with circumspection and that the

court should be slow to condone the delay in such

circumstances. It is further pointed out that though the

Hon'ble Supreme Court rejected the argument that

Section 5 of the Limitation Act, 1963, is not applicable to

the provisions of the Act, the commercial nature of the

transaction will have to be taken into account, while

considering an application under Section 5 of the

Limitation Act, 1963. In the present case, the First



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Appellate Court has not undertaken such exercise and therefore the order impugned is susceptible for interference in exercise of the powers of this Court under Article 227 of the Constitution of India.

5. *Per contra*, Shri.T.Krishnanunni, the learned Senior Counsel appearing for the 1st respondent, pointed out that though in the application the delay is stated as 168 days, the actual extent of delay is much less. The learned Senior Counsel further pointed out that the actual extent of delay can only be calculated from 20.05.2024 till 24.08.2024, when unnumbered R.F.A of 2024(Filing No.232/2024) was preferred before this Court. Thus the period from 24.08.2024 till 01.10.2024 will have to be excluded. Thereafter, even if it is taken as 15 days for representation, the appeal having been presented on 25.10.2024, the further delay is only 10 days. The learned Senior Counsel further pointed out that it is only by abundant caution that the delay from



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20.05.2024 till 25.10.2024 was stated in the affidavit accompanying the application for condonation of delay.

6. I have considered the rival submissions raised across the Bar and perused the order impugned in the original petition.

7. Section 13 of the Commercial Courts Act, 2015, reads as under :-

13. Appeals from decrees of Commercial Courts and Commercial Divisions.—[(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent



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of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

8. The time stipulated for filing an appeal against the decree of the Commercial Court and Commercial Division is 60 days. The question is whether the District Court exercising the original civil jurisdiction or the commercial division of the High Court can condone the delay in filing the appeal beyond 60 days.

9. The power of the courts to condone the delay beyond the prescribed period of limitation is provided under Section 5 of the Limitation Act, 1963. Section 29(2) of the Limitation Act, 1963 provides that when a special or local law prescribes a time limit for filing any suit or appeal, unless the provisions of Sections 4 to 24 of the Limitation Act, 1963, are specifically excluded by the enactment, the provisions of Section 5 of the Limitation Act, 1963, will apply.



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10. What is now contended before this Court is that in view of the specified period provided under Section 13 of the Commercial Court Act 2015, the operation of Section 5 of the Limitation Act, 1963, is limited. Even assuming that Section 5 of the Limitation Act, applied, the manner in which the court should apply the discretion under Section 5 of the Limitation Act, 1963, for condonation must be judged in the context of the purpose for which the Act was enacted.

11. At the outset this Court must notice that the argument that Section 5 of the Limitation Act, 1963, cannot be applied for an appeal filed under Section 13 of the Act, was rejected by the Hon'ble Supreme Court in **Government of Maharashtra (Water Resources Department) Rep. by Executive Engineer v. M/s Borse Brothers Engineers and Contractors Pvt. Ltd.** [2021 (6) SCC 460]. Therefore, it is beyond cavil that Section 5 of the Limitation Act, 1963, applies to the



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provisions of the Act.

12. Next, it is to be considered as to whether the 1st respondent has shown sufficient cause in not filing the appeal within time. As stated above, the appeal ought to have been filed on or before 20.05.2024, whereas the 1st respondent had filed an appeal before this Court on a mistaken assumption that this Court has jurisdiction to entertain the appeal against the decree passed by the Commercial Court. The appeal was preferred on 24.08.2024 and was disposed of only on 01.10.2024. Therefore, the period spent between 24.08.2024 upto 01.10.2024 is not liable to be counted for the purpose of calculating the delay. If the aforesaid period is excluded, the extent of delay is only 81 days.

13. The reason stated for the condonation of delay is wrong advice by the counsel. It is now settled law that a wrong advice given by the counsel constitutes a sufficient cause for condoning the delay. Therefore this



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Court is of the view that the reasons stated in the application for condonation of delay constitute a sufficient cause for filing an appeal beyond the stipulated period of 60 days under Section 13 of the Act.

14. Yet another aspect to be looked into is that the First Appellate Court had exercised its discretion and decided to condone the delay. The question is whether this Court, in exercise of its powers under Article 227 of the Constitution of India can interfere with such exercise of discretion. The First Appellate Court was satisfied with regard to the reason stated by the 1st respondent and concluded that the reason constituted a sufficient cause for condoning the delay. Unless the exercise of the discretion by the First Appellate Court is found to be perverse, this Court will not exercise its jurisdiction under Article 227 of the Constitution of India, merely because two views are possible. Since this Court has found that there is no bar for the application under



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Section 5 of the Limitation Act, this Court is not persuaded to hold that the discretion exercised by the Appellate Court in condoning the delay is required to be interfere in exercise of the power under Article 227 of the Constitution of India.

Resultantly, this original petition fails and the same is dismissed.

Sd/-

**EASWARAN S.
JUDGE**

AMR



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APPENDIX OF OP(C) NO. 2325 OF 2025

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE JUDGMENT IN C.S. NO. 19/2022 DATED 07.11.2023
Exhibit P2	TRUE COPY OF THE I.A. NO. 1/2024 IN C.A. NO. 25/2024
Exhibit P3	TRUE COPY OF THE ORDER IN R.F.A. NO. 232/2024 (FILING NO.) DATED 01.10.2024
Exhibit P4	TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS BEFORE THE COMMERCIAL APPELLATE COURT, ERNAKULAM
Exhibit P5	CERTIFIED COPY OF THE ORDER IN I.A. NO. 1/2024 IN C.A. NO. 25/2024 DATED 30.07.2025