

IN THE COURT OF THE SUBORDINATE JUDGE, KOZHIKODE

Present:- Sri.Krishnankutty.K.V, 1st Additional Sub Judge

Wednesday, the 19th day of June, 2024

R.P.I.A-39/2022 in O.S-No. 170/2020

Between:

Changaroath Yusuf, aged 46 years,
S/o.Ibrahim Kutty, Changaroath House,
Pannikkottoor P.O., Kozhikode – 673 572.

Petitioner/D1

And:

- | | |
|---|--------------------|
| 1. Ramla.P.K., aged 48 years,
D/o.Panarukandiyil Muhammed,
Panarukandiyil House, Pannikkottoor P.O.,
Kozhikode – 673 572. | |
| 2. Salaliyath. P.K., aged 26 years, D/o.Panarukandiyil
Muhammed, Panarukandiyil House, Pannikkottoor P.O.,
Kozhikode – 673 572. | |
| 3. Shadiya.P.K., aged 27 years, S/o.Panarukandiyil
Muhammed, Panarukandiyil House, Pannikkottoor P.O.,
Kozhikode – 673 572. | Respondents/
D2 |
| 4. Muhammed Shabin, aged 24 years,
S/o.Panarukandiyil Muhammed, Panarukandiyil (H),
Pannikkottoor P.O., Kozhikode – 673 572. | |
| 5. Sana Fathima, aged 14 years, D/o.Panarukandiyil
Muhammed, Panarukandiyil (H), Pannikkottoor P.O.,
Kozhikode – 673 572. | |
| 6. Ashraf.K.K, 46 years, S/o.Muhammed Koya,
Kalanukandi house, Nanminda, Kozhikode. | |

This petition coming on 10th day of June, 2024 for final hearing before me in the presence of Sri.Abdul Jaleel Onath and Smt.Jinu T. George, Advocates for Petitioner and Sri.K.M. Musthafa and Smt.V.G. Neena, Advocates for R1 to R5, R6 not filed vakalath, and having stood over to this day for consideration, the court passed the following.

ORDER

This is an application to set aside ex parte order dt. 17.02.2022 filed by Petitioner/defendant in the suit.

2. The petitioner herein contends that he was unwell in bed, due to back pain, he was not able to contact the lawyer, give instructions to the lawyer regarding the case, or take the necessary steps. The absence of the petitioner before this court was due to the above reasons and there was no willful delay or default on his part. Hence, the petition is to be allowed, unless the petitioner would be put to irreparable loss and hardships, contends the petitioner. There is medical evidence produced in support of the petition to verify whether the petitioner was actually laid up on the day of the list. Hence, the petitioner seeks an order setting aside the ex parte decree.

3. The respondent filed counter stating that the petition is not maintainable. The intention of the petitioner is to drag the matter some how. Hence, the petition is to be dismissed.

4. Heard both sides. No witness examined, Ext. A1, A2 marked from the side of petitioner. No witness examined, but Ext. B1, B1(a) and B2 marked from respondents.

5. The points that arise for consideration are:-

1. Whether petitioner/defendant entitled to get ex-parte decree set aside as prayed for?
2. Reliefs and costs?

6. **Points No. 1 and 2 :-** I verified the petition, counter and case records. Medical records also produced by petitioner. But respondents produced Ext. B1, B1(a) and B2 documents. On verification of Ext. B1 and B2 it is clear that petitioner attended one marriage function on 17.02.2022. petitioner didn't filed any replication to challenge the above counter of respondents or examined any witness. Hence, petitioner not proved sufficient reason for setting aside ex parte order as prayed in the petition. Hence, petition

is devoid of merit and dismissed in the interest of justice. Considering facts and circumstances no costs.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in Open Court, this the 19th day of June 2024).

Sd/-
I ADDITIONAL SUB JUDGE

Petitioner's Witness: Nil.

Petitioner's Exhibits:

- A1 - 28-01-2022 - Prescription of Dr. Aravindakshan.
- A2 - 28-01-2022 - Prescription of Dr. Aravindakshan.

Respondents' witness: Nil.

Respondents' Exhibits:

- B1 - 17-02-2022 - Photo of wedding function.
- B1(a) - 17-02-2022 - Compact disc.
- B2 - 17-02-2022 - Wedding invitation card.

Sd/-
I ADDITIONAL SUB JUDGE

/True copy/

Fair/Copy/Carbon copy of Order
in R.P.I.A-39/2022
in O.S-No. 170/2020
Dated. 19-06-2024