

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III, ALAPPUZHA  
Present : Sri.Suhaib.M., Additional District & Sessions Judge – III  
Tuesday the 07<sup>th</sup> day of April 2026 / 17<sup>th</sup> day of Chaithra, 1947  
CMA 30/2024

(Filed on 23..08..2024)

(Appeal against the order in IA No. 1/2023 in R.P No. 53/2022 in OS 663/2019  
on the file of Munsiff's Court, Alappuzha)

Appellants : 1. Kurian George, aged 61 years,  
S/o. George, Plamparambil House,  
Thirumoola P.O, Kuttappuzha Village,  
Thiruvalla Taluk, Pathanamthitta.  
2. Saramma Kurian, aged about 56 years,  
W/o. Kurian George, Plamparambil House,  
Thirumoola P.O, Kuttappuzha Village,  
Thiruvalla Taluk, Pathanamthitta.

( By Adv. P. A. Aslam)

Respondent : Ramesh Kumar, aged 55 years,  
S/o. C.K. Damodaran Nair, Puthenveedu House,  
Anaprambil North P.O, Thalavady Village,  
Alappuzha.

This appeal having been finally heard on 01..04..2026 and the  
court on 07..04..2026 passed the following.

**JUDGMENT**

This appeal is filed under Order 43 Rule 1 r/w S.104 of the Code of Civil  
Procedure by the respondents in I.A. No. 1/2023 in Restoration Petition  
No.53/2022 in O.S. No.663/2019 on the files of the Principal Munsiff's Court,  
Alappuzha, being aggrieved by the order dated 28.02.2024. As per the impugned  
order, the petition filed by the plaintiff for reviewing order dated 19.08.2023

dismissing Restoration Petition No.53/2022 for non-payment of costs was allowed.

2). The case of the petitioner in the petition for review in brief is the following:- The suit was dismissed for default. Hence the plaintiff filed a petition to restore the suit. That petition was allowed as per order in RP No.53/2022 on condition to pay the cost of Rs.2,000/-. Since the plaintiff/petitioner committed default in paying the costs within the time limit, the restoration application was dismissed. Hence, the petition to review the order dated 19.08.2023.

3). The Respondent entered appearance before the trial Court and submitted counter statement, the brief description of the same is as follows:- The suit was filed by creating a forged consent letter of second defendant. After suit was dismissed for default, the restoration petition No.53/2022 was filed showing false facts. However, that petition was allowed on costs of Rs.2,000/-. The cost was not paid purposefully within the time granted by the court. Hence this petition is liable to be dismissed.

4). Heard both sides.

5). The following is the point that would arise for consideration.

Whether the impugned order passed by the trial Court is to be

interfered with and if so, what are the conditions?

6). **The Point:** - In the appeal memorandum, the main ground raised is that the trial court did not consider the facts that the respondent/plaintiff did not file any petition to condone the delay of 72 days in filing the review petition.

7). RP. 53/2022 was allowed by the trial court on 16.08.2023 with condition that the petitioner/plaintiff shall pay costs of Rs.2,000/- to the respondents/defendants on or before 22.08.2023. IA 1/2023 for reviewing the order for dismissal of the restoration petition for want of payment of costs was filed on 01.12.2023. As per Article 124 of the Schedule of the Limitation Act, review petition is to be filed within one month. As such, the review petition was filed beyond the period of limitation. However, it is seen that the question of limitation was not raised before the trial court by the appellants in the objection filed on the review petition. So, there had no raising of point on the question of limitation in the impugned order. The Hon'ble Supreme Court in **Jai Ram v. Som Prakash [2025 KHC 7134]** has taken a view that without making no objection on the question of limitation before the District Court and no issue was raised and no evidence was let in on the question of limitation, the High

Court could not have set aside the order of District Court. This view of the Apex Court indicates that the plea of limitation cannot be raised first in the appeal stage. The Hon'ble Apex Court in **Shanti Rani Das Dewanjee v. Dinesh Chandra Day [1997 KHC 1093]** did not entertain the plea of question of limitation taken first in the appeal stage. Since the question of bar of limitation is a mixed question of fact and law, should have been raised by the appellants at the first instance before the trial court. Without doing so, the dispute as to limitation cannot be entertained at the appeal stage.

8). The impugned order would show that the trial court has examined the objection and argument made by the appellants and found that the reasons stated in the petition shall come with the category of “any other sufficient cause” and accordingly, the order dated 19.08.2023 was recalled and the petitioner therein was permitted to pay the costs to the respondent therein on or before 06.03.2024.

9). Having gone through the impugned judgment, it would appear that the trial court has taken pragmatic view in the matter of reviewing its order by permitting the petitioner therein to pay the costs to the respondents therein. I do not find any reason to interfere with finding made by the trial court in the impugned order. So that, this appeal cannot be entertained and hence liable to

be dismissed.

In the result, this appeal is dismissed. Parties shall bear their respondent costs of this appeal. The plaintiff/respondent shall pay the costs of Rs.2,000/- to the defendants/appellants as per the impugned order, if not already paid, on or before 30.05.2026 to the satisfaction of the trial court and then, the suit shall be restored on file and on failure to pay the costs, the original position of dismissal of the suit for default shall maintain.

*(Dictated to CA, transcribed by her, corrected by me and pronounced in open Court on this, the 07<sup>th</sup> day of April, 2026)*

Sd/-

***Suhaib. M***

***Addl.District Judge-III***

**Appendix-Nil**

Id/-

***Addl.District Judge-III***

