

IN THE COURT OF THE DISTRICT JUDGE, ALAPPUZHA

Present: Smt.Honey M.Varghese, District Judge

Tuesday the 31st day of March 2026/ 10th Chaithra 1947

CMA No.54/2025

(Against the order dated 02.09.2021 in I.A No. 122/2020 in
O S No 1043 of 2016 of the Principal Munsiff Court, Alappuzha)
(Filed on 26.09.2025)

Appellants/: 1. Augustine Joseph, Aged 55 years, S/o Joseph,
Petitioners Kocheekkaran House, Vandanam Muri, Punnapra
Village, Punnapra P.O, Alappuzha District
2. Anila, Aged 23 years, D/o Late Betty,
Kocheekkaran House, Vandanam Muri, Punnapra
Village, Punnapra P.O, Alappuzha District
3. Babila, Aged 20 years, D/o Late Betty,
Kocheekkaran House, Vandanam Muri, Punnapra
Village, Punnapra P.O, Alappuzha District

By Adv.S.Sulfikar

Respondent: Antony.D, S/o Devassia, Nadappura House,
Kanjippadam Muri, Ambalappuzha North Village,
Ambalappuzha Taluk

By Adv.K.B.Viswanathan Pillai

This petition having been heard on 26.03.2026 and the court on 31.03.2026 passed the following:-

JUDGMENT

This appeal is filed at the instance of petitioner/defendant in IA No.122/2020 in OS No.1043/2016 on the file of Munsiff Court, Alappuzha.

2. IA 122/2020 is filed to set aside the exparte judgment and decree dated 23.10.2020 in the above suit. The above suit is filed for realisation of money. The case was posted for filing written statement. The appellant could not file written statement after several opportunities. Thereafter, the appellant was set exparte by the learned Munsiff and consequently exparte judgment and decree was

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passed. The appellant filed IA 122/2020 for setting aside the said exparte judgment and decree. It is contended that appellant is a house wife and she has no knowledge to give instruction for preparing written statement. Her husband was giving instruction for the same. Since her husband was working abroad she could not file the written statement on time. Though the appellant filed petition to set aside the exparte order that was dismissed and on 23.10.2020 exparte judgment and decree was passed. Thereafter, IA 122/2020 is filed to set aside the said exparte judgment and decree.

3. The respondent/plaintiff filed objection stating that the petition is not maintainable either in law or on facts. They contended that the reason stated for setting aside the exparte judgment and decree is not a sufficient one. The contention of the appellant that she is a house wife and not able to give instruction for preparing written statement without the assistance of her husband is a false claim. The appellant has instituted so many cases against the respondent since 2016. There is no ground for setting aside the judgment and decree and prayed for dismiss the petition.

4. The learned Munsiff after considering the contentions raised by the parties dismissed the petition holding that the contention put forward by the appellant that she has no knowledge

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regarding the disputes enabling her to give instruction for the preparation of written statement is not a tenable contention and accordingly dismissed the petition. The said order is challenged in this appeal.

5. Heard both sides and perused the materials produced before this court. Both sides raised contentions based on the averments stated in there petition and objection. Considering the contentions and also on the basis of grounds mentioned in the appeal memorandum the following points are raised for consideration.

6. **Points for consideration**

(i) Whether the impugned order is liable to be interfered with?

(ii) The order

7. **Point No.(i):-** The learned counsel for appellant submitted that though the case is posted for filing written statement, the defendant who is a house wife was not able to give instruction for the preparation of written statement and hence written statement could not file on time. It is also submitted that, her husband was giving instruction for the counsel regarding the case. Her husband was working abroad at that time. The learned counsel for the respondent on the other hand refuted the contentions stating that the appellant

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filed several cases against the respondent from 2016 onwards. According to him, the appellant herself is competent to manage the cases and hence the contention that her husband has to give instructions to the counsel for preparing the written statement is a false contention. I had perused the documents produce before this court. This suit is of the year 2016. The suit was filed on 13.12.2016 by the respondent herein for a decree for realisation of a sum of ₹2,00,000/- with interest. It is contended that, the parties entered into contract for the construction work of the residential building of the petitioner herein. The contract was entered on 28.06.2015. It is alleged that the appellant failed to perform his part of contract and committed the breach. The work could not start in time. The respondent alleged that he is entitled to get ₹2 lakh more from the appellant. The appellant filed CC 321/2016 before the Consumer Dispute Redressal Forum, Alappuzha, alleging delay and deficiency in service on the side of respondent. The learned counsel for the appellant consistently argued that since the appellant is a house wife she was not able to point out the defect of the building and also to give appropriate instructions to the counsel for preparing written statement. It is also argued that for filing the petition before the CRDF her husband had taken the initiatives. The appellant was diagnosed

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with cancer during 2020-21. So, she could not go to the office of the counsel during that period. While considering the matter learned counsel for the appellant conceded that the complaint filed before the Consumer Disputes Redressal Forum is dismissed. The appeal filed before the state consumer forum also dismissed.

8. Considering the proceedings involved in this case it is seen that the appellant appeared before the trial court on 27.02.2017. On a perusal of the proceedings before the trial court it is seen that even after ample opportunities, the appellant failed to file written statement. It is seen further that, on 26.09.2018 the appellant submitted that written statement was being filed with petition to accept it. Case was adjourned to 03.12.2018. Even on 03.12.2018 no written statement was filed and the learned counsel for appellant submitted no instructions before the court. The appellant was set exparte. IA 4257/2019 was filed to set aside the exparte order. No written statement was filed even at that time. The written statement was ultimately filed on 14.08.2020. It is contended that, the husband of appellant was actually dealing with the construction works and also competent to give instruction to the counsel for filing written statement. According to the appellant her husband was abroad and hence the instructions could not be given on time. It is pertinent to

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note that, no documents are produced to substantiate this contention. Moreover, the evidence available before this court would show that the appellant filed complaint before the District Consumer Disputes Redressal Forum and appeal before the state forum. The learned counsel for appellant tried to raise contentions before this court that the appellant was diagnosed with malignancy and hence she was not able to come to the office of the counsel. It is to be noted that, as I pointed out the exparte judgment and decree was passed on 23.10.2020. Even if the contention is accepted the so called illness was diagnosed after the exparte judgment and decree. Further, no documents are available to prove this fact also. The learned counsel for the respondent submitted that the intention of the appellant is to drag the execution proceedings. It is contended that, no sufficient cause is put forward to set aside the exparte decree passed against the appellant. As I pointed out the case is of the year 2016 almost two years time was granted to the appellant for filing written statement. Even the contention of appellant is taken into account that her husband is competent to give instructions, it is highly unbelievable that her husband did not come over India during this period. As I stated herein before no document is also available to prove this aspect. Had this been the situation, the passport ought to have been

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produced. Hence, the cause put forward by the appellant to condone her absence and also for filing written statement cannot be treated as a valid ground. It is true that court should generally take a liberal approach to accept sufficient cause to ensure that justice is served rather than adhering to a strict rigid rule. But in this case considering the reason stated by the appellant it seems that the appellant was not vigilant in prosecuting the case and hence not entitled for the discretion in her favour. On the basis of the above discussions, I hold that the impugned order does not warrant any interference and is liable to be upheld. The point is decided accordingly.

9. **Point No.(ii):-** In the result, appeal is dismissed. Considering the nature of disputes, both sides are directed to bear their respective cost.

Dictated to the confidential Asst. transcribed and typed by him, corrected by me and pronounced in open court on this the 31th day of March, 2026.

APPENDIX: Nil

Sd/-
HONEY M.VARGHESE
DISTRICT JUDGE

Id/-
DISTRICT JUDGE