

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Thursday the 10th day of July 2025/ 19th Ashada, 1947

IA No.3/2024 and IA No. 4/2024 in O.S. No. 263/2023

IA No.3/2024 in O.S. No. 263/2023

Petitioner/3rd Defendant:-

Dr. Leera Raju, aged 48 years, W/o.C A Kuriakose Vikas,
Pandaaraparambil House, LG Pai Road, Mattancherry PO, Pin-
682002

By Adv. M A Asif

Respondent/Plaintiffs/Defendant 1 and 2:-

- 1 C T Aloysious William, aged 83 years, S/o.Late.C M Thomas, C C No.1/1433, Champadi House, Chirattapaalam Road, Fort Koch PO, Pin-682001, through next friend Vinita Francis, Pailyathil, D/o.C T Aloysious William, and W/o.Palayathil Cheeku Francis, aged 51 years, 39 Gardiner Drive, Ajax, LIS 5Y4, Ontario, Canada represented by her power of attorney Sebastian Yesudas, S/o.Late Arakkaparambil Sebastian, aged 59 years, r/o Door No.9/881, Arakkaparambil House, Pandikkudi Road, Kochi-682002.
- 2 Vinita Francis, Pailyathil, D/o.C T Aloysious William and W/o.Palayathil Cheeku Francis, aged 51 years, 39 Gardiner Drive, Ajax, LIS 5Y4, Ontario, Canada represented by her power of attorney Sebastian Yesudas, S/o.Late Arakkaparambil Sebastian, aged 59 years, r/o Door No.9/881, Arakkaparambil House, Pandikkudi Road, Kochi-682002.
- 3 C A Thomas Win, aged 54 years, S/o.C T Aloysious William, working with Worldwide Logistic System LLC, P B No.11392, Damam, Saudi Arabia
- 4 C A Kuriakose Vikas, aged 52 years, S/o.C T Aloysious William, The Kanii Group, P B No.290, Allquoz, Dubai, UAE.

R1 & R2 By Adv. A Anilkumar

IA No. 4/2024 in O.S. No. 263/2023

Petitioner/Defendant:-

Dr. Leera Raju, aged 48 years, W/o.C A Kuriakose Vikas,
Pandaaraparambil House, LG Pai Road, Mattancherry PO, Pin-
682002

By Adv. M A Asif

Respondent/Plaintiff/Defendant 1 and 2:-

- 1 C T Aloysious William, aged 83 years, S/o.Late.C M Thomas, C C No.1/1433, Champadi House, Chirattapaalam Road, Fort Koch PO, Pin-682001, through next friend Vinita Francis, Pailyathil, D/o.C T Aloysious William, and W/o.Palayathil Cheeku, Francis, aged 51 years, 39 Gardiner Drive, Ajax, LIS 5Y4, Ontario, Canada represented by her power of attorney Sebastian Yesudas, S/o.Late Arakkaparambil Sebastian, aged 59 years, r/o Door No.9/881, Arakkaparambil House, Pandikkudi Road, Kochi-682002.
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- 3 C A Thomas Win, aged 54 years, S/o.C T Aloysious William, working with Worldwide Logistic System LLC, P B No.11392, Damam, Saudi Arabia
- 4 C A Kuriakose Vikas, aged 52 years, S/o.C T Aloysious William, The Kani Group, P B No.290, Allquoz, Dubai, UAE.

R1 & R2 By Adv. A Anilkumar

These petitions are come up for hearing before me on 05.07.2025 and the court on 10.07.2025 passed the following:-

COMMON ORDER

IA 4/2024 is filed by the petitioner under Order XXXII Rule 4(1) and Order XXXII Rule 9(1) of the Code of Civil Procedure 1908 seeking removal of 2nd respondent/2nd plaintiff from the status of next friend of the 1st respondent/ 1st plaintiff. IA 3/2024 is filed by the petitioner under Order XXXII Rule 10 of the Code of Civil Procedure 1908 seeking stay of further proceedings in the suit.

2. **The averments in the petition is brief is as follows:-** The suit is filed by the 2nd respondent/2nd plaintiff on behalf of 1st plaintiff. The 1st plaintiff is suffering from dementia and hence the 2nd respondent/2nd plaintiff filed the suit as a next friend of the 1st respondent/1st plaintiff. According to the petitioner the 2nd respondent is a resident of Canada residing there with her family right from 1996 and for that reason she is represented in the suit through a power of attorney holder. Hence, the petitioner contended that the 2nd respondent cannot act as a next friend of the 1st respondent/1st plaintiff as she is unavailable in India and sought for removal of the 2nd respondent from the status of next friend. In addition to the same the petitioner herein had filed IA 3/2024 specifically pointing out that

further proceedings in the suit may be stayed on account of the statutory inhibition under Order XXXII Rule 10 of Code of Civil Procedure 1908 to continue with the suit.

3. No objection is filed by the respondents in these applications. But during course of hearing the respondents contended that the petition is not maintainable and removal of 2nd respondent from the status of next friend is legally untenable and such removal may cause serious hardships to the 1st respondent/1st plaintiff as well since he is suffering from dementia and is incapable to manage his own affairs due to the mental infirmity.

4. Points arise for consideration:-

1. Whether the petitioner is entitled to an order for removal of the 2nd respondent/2nd plaintiff from the status of next friend of the 1st respondent/ 1st plaintiff?
2. Whether the petitioner is entitled to an order of stay of further proceedings in the suit?
3. Reliefs and Cost?
5. Heard both sides.

6. **Point No.1 and 2:-**Admittedly the 2nd respondent is the next friend of the 1st respondent. The 2nd respondent is a resident of Canada and she is represented through the power of attorney holder. Order XXXII Rule 9(1) of the Code of Civil Procedure 1908 envisages that the next friend shall be a resident of India and if it is otherwise, then such a

next friend who ceases to reside within India can be removed from such status. Order XXXII Rule 10 of the Code of Civil Procedure 1908 specifies that further proceedings shall be stayed on account of the removal of the next friend till the appointment of the next friend in his place. Here in the present case on hand, the next friend, who is the 2nd respondent/2nd plaintiff is represented through the power of attorney holder, since she is residing in Canada. A next friend must act personally in the best interest of the person he represents. Delegation of duties by way of Power of Attorney defeats the purpose of the role. Hence on account of the statutory inhibition under Order XXXII Rule 9(1), this court is of the opinion that further proceedings cannot be continued with 2nd respondent/2nd plaintiff as next friend of the 1st respondent/1st plaintiff. Accordingly, I.A 04/2024 filed by the petitioner is allowed. In view of the specific prohibition under Order XXXII Rule 10 to continue with the suit, until the appointment of a new next friend, this court is of the opinion that I.A 03/2024 filed by the petitioner also can be allowed. Accordingly point No.1 and 2 are found in favour of the petitioner.

7. **Point No.3:-** As point no. 1 and 2 are found in favour of the petitioners, this point is also found in favour of the petitioner.

In the result, the applications are allowed in the following manner:-

- 1. The 2nd respondent/2nd plaintiff is removed from the status of the next friend of the 1st plaintiff.**
- 2. All further proceedings in the suit are stayed, until the appointment of a new next friend for the 1st plaintiff.**

(Dictated to the Confdl.Asst; transcribed and typed by her, corrected and pronounced by me in open Court on this the 10th day of July 2025.)

Sd/-
Simi P Siju
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

COMMON ORDER

I.A. No.03/2024 & I.A. No.04/2024

O.S. No.263/2023

Dated : 10.07.2025