

**IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),MUVATTUPUZHA**

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)

Thursday, the 21<sup>st</sup> day of November, 2024 / 30<sup>th</sup> Karthika 1946

**I.A.No. 23/2024 in O.S No.6/2019**

**Petitioner/ Defendant:-**

C.P. Pappachan, aged 67 years, S/o Kochappu, Chakiath House,  
Thundathumkadavu, Varapuzha P.O, Ernakulam District  
– 683 517.

By Adv. Yash Thomas Mannully & Soman P Paul.

**Respondent/Plaintiff:-**

Jose K.J, aged 45 years, S/o P.O. Francis Kannathukuzhi House,  
Perumbaloor P.O, Maradi, Ernakulam District.

By Adv. Sayed M Thangal, Febin Raj T.S & Sruthi Das

This petition is filed under Section 151 of the Code of Civil Procedure,1908 to dismiss OS.6/2019 for non-compliance with order dated 26.08.2019 in IA No.692/2019 in O.S No. 6/2019 and is coming on for hearing on 21.11.2024 in the presence of the above counsel and the Court on the same day passed the following:-

**ORDER**

This petition is filed by the petitioner/defendant under Section 151 of the Code of Civil Procedure to dismiss OS 6/2019 for non-compliance with order dated 26.08.2019 in IA 692/2019 in OS 6/2019. This petition is supported by an affidavit sworn by the petitioner.

2. Brief averments in the affidavit in support of the petition are as follows:- Suit was dismissed for default by this Court as per order dated 27.06.2019. The suit was restored to file as per order dated 26.11.2019 in IA 692/2019. It is submitted that the petitioner was directed to provide costs of ₹2000/- to the defendant as per order dated 26.08.2019 in IA 692/2019 for restoring the suit and the said amount has not been paid to him or his counsel as directed by the court. The memo filed by the plaintiff stating that costs of ₹2000/- was paid to the defendant does not bearing the signature of his counsel who holds his vakalath at that time. In the proceedings dated 26.10.2019 in IA 692/2019, it is stated that, 'both sides represented. Costs mistakenly paid to another counsel. For payment of cost last chance 06.11.2019'. There was no sitting on 06.11.2019 and also on 16.11.2019 and the case was adjourned to 26.11.2019. On 26.11.2019, despite no costs being paid, the suit was restored to file based on the fraudulent submission of the plaintiff that the costs was paid. The plaintiff filed the suit with false identity. Therefore, the above act of the plaintiff is also the part of fraud. Hence, the suit is to be dismissed for non compliance of order dated 26.08.2019 in IA 692/2019.

3. Brief averments in the objection filed by the respondent/plaintiff are as follows:- The petition is not maintainable either in law or on facts. It is true that the suit was dismissed for default, and the same was restored as per order dated 26.11.2019 in IA 692/2019 on condition to pay costs of ₹2000/-. In compliance of the said order, the costs was paid to Adv.T.E.Varkey, who is the counsel regularly appeared for the defendant. The said fact is known to the defendant. Meanwhile, the defendant changed his counsel and thereafter, he approached this court with a contention that the plaintiff filed the suit with false identity. The defendant appeared before the court through Adv. Udayabhanu (Roll No. K/148/1985), Adv. Pratheesh Kumar (Roll No. K/304/2016), Adv. Varghese Vinu (Roll No. K/296/2013), and Adv. N.P. Thankachan (Roll No. K/33/1986), whose office is at Sha Complex, Mullassery Canal Road, Ernakulam. Adv. N.P. Thankachan was practicing in Moovattupuzha. Adv. T.E. Varkey (Roll No. K/533/1987), an associate of Adv. N.P. Thankachan, also appeared. Subsequently, the defendant changed his counsel, and Adv. Soman Paul and Yash Thomas are presently appearing for the defendant. But, only Adv. Udayabhanu has relinquished his vakalath, while all others are still holding their vakalath. The intention of the defendant is only to

protract the matter. The suit was listed for evidence on 07.03.2023. From the side of the plaintiff, five witnesses were examined and from the side of the defendant, two witnesses were examined. For the last 11 months defendant is protracting the case. Hence, the respondent prayed to dismiss the petition.

4. Both sides were heard.

5. I have perused the records. Suit was dismissed for default on 27.06.2019. My learned predecessor-in-office restored the suit on the files of the Court as per order dated 26.08.2019 in IA No.692/2019 with a condition to pay costs of ₹2000/- to the counsel for the respondent who filed vakalath, and filed memo failing which petition stands dismissed. Then, the restoration petition posted for reporting compliance of the order to 18.09.2019. But, on that day as there was no sitting the case was notified to 26.10.2019. The docket order dated 26.10.2019 is as follows:  
*“Both sides represented. Costs mistakenly paid to another counsel. For payment of cost last chance 06.11.2019”.*

6. On 06.11.2019 and on 16.11.2019, there was no sitting, and the case was notified to 26.11.2019. On 26.11.2019 it is recorded as costs paid, IA closed.

7. I have perused the two memos filed by the counsel for plaintiff. The first memo is dated 04.09.2019 stating the payment of costs with endorsement of Adv. Clerk Deepa. A.R for Adv. C.T. Appachan. The second memo is dated 05.11.2019 stating the payment of costs with endorsement of Adv. T.E. Varkey. After hearing the petition, Adv. T.E. Varkey filed affidavit stating that during 2019-20, he was attached to the office of Adv. N.P. Thankachan. While so, three cases were sent by Adv. C.P. Udayabhanu of Ernakulam to the office. He was taking care of both civil and criminal cases in the said office. Except the present case, in other two cases he filed joint vakalath. But, he continued representing the defendant 4-5 times in the present case. Since he was not holding vakalath, he was hesitant to receive the costs. But, on the request of the counsel at Ernakulam he received the costs and made endorsement on the memo and informed the counsel at Ernakulam and also informed to file vakalath at the earliest. Taking advantage of the situation, the defendant collected file and costs received from the office to avoid payment of fees.

8. After filing the said affidavit, both sides were heard again. The counsel for the defendant disputed the affidavit. There is nothing to disbelieve an affidavit filed by a senior counsel who is regularly appearing before the Court. Therefore, I am of the view that the contention raised by the petitioner/defendant at the fag end of the case is without bonafides and the the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs

Dictated to the Confidential Assistant, typed by her directly into computer, corrected by me and pronounced in the Open Court on this the 21<sup>st</sup> day of November 2024.

Sd/-  
ATHEEK RAHMAN  
CIVIL JUDGE(SENIOR DIVISION)

**APPENDIX** :- Nil

Sd/-  
CIVIL JUDGE(SENIOR DIVISION)

Typed by : Ss/-

Compd by : Bmm/-

// True Copy //

(By Order)

Sheristadar

**Copy of Order**

**in I.A. 23/2024**

**in O.S. 6/2019**

**Dated: 21.11.2024**