

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

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

Thursday, the 23<sup>rd</sup> day of January, 2025 / 3<sup>rd</sup> Magha 1946

**I.A.No. 22/2024 in O.S No.82/2020**

**Petitioners/Defendants:-**

- 1 Shobu George aged 47 years S/o N C George Nadukudiyil Veedu, Kuroor Kara, Kothamangalam Taluk.
- 2 Kunjamma George, aged 74 years, W/o N C George Nadukudiyil Veedu, Kuroor Kara, Kothamangalam Taluk.
- 3 Eldho Shobu S/o Shobu George, - Minor represented by his Father Shobu George 1<sup>st</sup> Defendant
- 4 Anie Shobu aged 42 years, W/o Shobu George Nadukudiyil Veedu, Kuroor Kara, Kothamangalam Taluk.

By Advs.Pradeep R & Jijo Joseph (Exparte)

**Respondents/Plaintiffs/ 5<sup>th</sup> Defendant:-**

- 1 Shibu George aged 53 years S/o N C George Nadukudiyil Veedu Kuroor Kara, Kothamangalam Taluk Now residing at Ayakkad Kara Thrikkariyoor Village, Kothamangalam Taluk.
- 2 Shency Anil aged 56 years, W/o Anil Anikkatt Veedu South Marady P O, Manjerippady Marady Village Muvattupuzha Taluk.
- 3 Shiji George aged 55 years W/o P J George, Karingazha Kara, Chelad P. O, Kothamangalam Village, Kothamangalam Taluk.
- 4 Shibi Shaju aged 50 years, W/o Saju, Chackalackal Veedu East Kadathi, Market P.O, Velloorkunnam Village, Muvattupuzha Taluk.
- 5 C I Varghese, aged 57 years, Chundattu Veettil, Kala Auditorium Kothamangalam Village, Kothamangalam Taluk.

R1 to R4 - By Adv. Gigi Peter.

R5- Jacob Lloid Paul.

This petition is filed under Order 9 Rule 7 and Section 151 of Civil Procedure Code and is coming on for hearing on 23.01.2025 in the presence of the above counsels and the Court on the same day passed the following:-

### **ORDER**

This petition is filed by the petitioners/defendants 1 to 4 under Order 9 Rule 7 and 151 of the CPC, to set aside the order dated 22.11.2024 passed against them. This petition is supported by an affidavit sworn by the 1<sup>st</sup> petitioner.

2. In the affidavit, it is stated that the case was listed for trial on 22.11.2024. But, the counsel for the petitioners reported no instruction and the case proceeded *exparte* against the petitioners. The petitioners were unaware of the said fact. There is no willful laches from the part of the petitioners. It is highly essential to set aside the order dated 22.11.2024 passed against the petitioners and permit them to participate the trial. Hence, the petition.

3. The respondents/plaintiffs filed objection stating that the affidavit in support of the petition does not disclose the real reason to set

the petitioners *ex parte*. The averment that the petitioners were unaware of the submission of no instruction from the part of their counsel is false. After arriving compromise, the petitioners themselves decided not to proceed with the case and willfully abstained from the proceedings. After the petitioners were set *ex parte*, the 2<sup>nd</sup> respondent appeared before the Court, submitted that the matter was settled and sought time to file compromise, and the Court granted time. Despite initially the petitioners accepting the compromise suggested by the respondents, the respondents later deviated from its terms and approached the Court with unclean hands. Hence, the respondents prayed to dismiss the petition.

4. Both sides were heard.

5. The case was posted for evidence to 22.11.2024. On that day, the counsel for D1 to D4 submitted 'no instruction' and the Court decided to proceed *ex parte* against the petitioners. The 5<sup>th</sup> defendant was present and he contested the case, and the case was adjourned for further evidence of the plaintiff to 26.11.2024. After the examining PW1 and PW2, the present petition was filed.

6. The respondents objected to the petition stating that the reasons stated in the affidavit in support of the petition is false. The

petitioners were aware of the fact that their counsel reported no instruction. After the petitioners were set *exparte*, the 1<sup>st</sup> petitioner appeared before the court and sought time for filing the compromise. After recording the submission, the case was adjourned for filing the compromise. Subsequently, the petitioners did not appear.

7. It is pertinent to note that the examination of the plaintiffs' witnesses is ongoing and has not yet been completed. It is true that on 26.11.2024, both sides submitted that matter was settled and prayed time to file the compromise by 30.11.2024, and the case being adjourned to 30.11.2024. However, on that day the petitioners remained absent, and the examination of PW2 was completed. Then, the case was adjourned to 18.12.2024 for further evidence. Again, the case was adjourned from 18.12.2024 to 07.01.2025 for further evidence. On that day, the petitioners filed the present application.

8. From the records it is seen that the petitioners were aware of the fact that their earlier counsel reported 'no instruction' and they were set *exparte*. The petitioners filed this petition on 18.12.2024, through their new counsel.

9. In *Subramania Iyer v. Valsala*: 2000 KHC 144, the Hon'ble High Court of Kerala held that, “*What exactly is the difference between 'good cause' and sufficient cause? Establishment of good cause requires only proof of lesser degree when compared to 'sufficient cause' for purposes of O.9 R.13. Sufficient cause itself is an elastic expression and requires to be applied in a meaningful manner aimed at meeting the ends of justice. The following guidelines are well established by judicial precedents. A liberal approach is necessary and Courts have wide discretion in deciding the question of 'sufficient cause'. The broad principles of natural justice demands that a litigant should not be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part. The Court has to bear in mind the wholesome principle that the right of a party to be heard should be negated only if there is gross negligence or gross carelessness. If some steps have been taken and application filed with some diligence and some evidence is adduced making out a 'sufficient cause' for absence, the application has to be allowed albeit subject to the common curative of costs. The Court has to take a broad view of the matter well informed by the principles of natural justice. Courts seldom decide a dispute without affording a reasonable opportunity to the otherwise to present its case. A*

*Judge has to act independently in the matter so that ends of justice will be met through exercise of broad discretion with reference to the facts and circumstances of each case.”*

10. Therefore, in the light of the above decision, I am of the view that an opportunity can be given to the petitioners to participate in the trial, in the interest of justice, as justice demands a disposal on merit. However, at the same time, the difficulty caused to the respondents cannot be lost sight of. I am of the view that the difficulty caused to the respondents can be compensated in terms of costs.

In the result, the petition is allowed on condition to pay costs of Rs.1,500/- to the respondents 1 to 4 within 3 days from the date of this order.

Dictated to the Confidential Assistant, typed by her directly into computer, corrected and pronounced by me in the Open Court, this the 23<sup>rd</sup> day of January 2025.

Sd/-  
ATHEEK RAHMAN  
CIVIL JUDGE(SENIOR DIVISION)

**APPENDIX** :- Nil

Sd/-  
CIVIL JUDGE(SENIOR DIVISION)

Typed by : Ss/-

Compd by :Sph /-

// True Copy //

(By Order)

Sheristadar

**Copy of Order**

**in I.A. 22/2024**

**in O.S. 82/2020**

**Dated: 23.01.2025**