IN THE COURT OF THE SUBORDINATE JUDGE, DEVIKULAM
Present: Smt. Resmi B. Chittoor, Sub Judge
On Saturday the 28th day of September, 2024/6th day of Aswina 1946
E.A. No.56/2024
IN
E.P.No. 13/2022
IN
O.S 48/2019

Petitioner/Judgement Debtor No. 9:-

Sreenivasan, S/o. Madhavan, Vattakunnel House, Pallivasal Villagee, Kalar Kara, Vattayar.P.O, Devikulam Taluk, Idukki District.

By Adv. Sri.Dilip Thomas

Respondents/Decree Holders/Judgement Debtors 1 to 8 and 10 to 15:-

1. Philip George, S/o. Sri.Varghese, aged 59 Residing at Vattichira, Champakulam Village, Attuvathala Muri, Kuttanad Taluk, Alleppey District.
2. Ulahannan Mathew, S/o. Ulahannan, aged 68, residing at Vazhaparambil House, Vadakkemuri, Vazhappally Muri, Changanacherry.
3. Mariamma Joseph, W/o. Late. Joseph, Vettichirayil House, Thekkekara P.O, Champakulam Village, Kuttanad Taluk, Alleppey District.
4. Anu.K.Joseph, aged 22, D/o. Late. Joseph, Vettichira Kanjooparambil House, Attuvathala Kara, Champakulam Village, Kuttanadu, Alappuzha District.
5. Minu.K.Joseph, aged 20 years, D/o. Late. Joseph, Vettichira Kanjooparambil House, Attuvathala Kara, Champakulam Village, Kuttanadu, Alappuzha District.
6. Goji.K.Joseph, aged 17, S/o. Late. Joseph, Vettichira Kanjooparambil House, Attuvathala Kara, Champakulam Village, Kuttanadu, Alappuzha District (Minor).
7. Tijo.K.Joseph, aged 14. S/o. Late. Joseph, Vettichira Kanjooparambil House, Attuvathala Kara, Champakulam Village, Kuttanadu, Alappuzha District (Minor).
8. Johney Mathew, S/o. Mathew, Vazhaparambil House, Vadakkekuri, Vazhappilly Muri, Changanassery.
9. George Mathew, S/o. Mathew, Vazhaparambil House, Vadakkekuri, Vazhappilly Muri, Changanassery.

10. Purushan, aged about 50, residing at Pankajam Estate, Layam Vattayar, Pallivasal Village, Devikulam Taluk.
11. Udayan, S/o. Thankappan, aged about 25, residing at Lucky Estate, Puramboke, Vattayar.P.O, Pallivasal Village, Devikulam.
12. Mercy, W/o. Udayan, aged about 30 years, residing at Lucky Estate, Puramboke, Vattayar P.O, Pallivasal Village, Devikulam.
13. Sivalinga Thevar @ Sevan, aged about 50, residing at Vettichira Estate, Vattayar, Pallivasal Village, Devikulam Taluk.
14. Vairamoni, W/o. Sevan, aged about 45 years, residing at Vettichira Estate, Vattayar, Pallivasal Village, Devikulam Taluk.
15. Mary Paulose, aged about 90 years, W/o. Late. T.M.Paulose of Theppalayil House, Odackacity Kara, Vellathooval Village, Devikulam Taluk, Now residing with Elsy John, Naduviledath House, Kadayiruppu.P.O, Kolencherry, Ikkaranadu Village, Kunnathunadu Taluk, Ernakulam District.
16. Sabu Paul, aged about 57 years, S/o. T.M.Paulose, of Theppalayil House, Odackacity Kara, Vellathooval Village, Devikulam Taluk.
17. Elsy John, aged about 64 years, W/o. Late. N.M.John (Daughter of Late. Sri.T.M.Paulose) Naduviledath House, Kadayiruppu.P.O, Kolencherry, Ikkaranadu Village, Kunnathunadu Taluk, Ernakulam District.
18. Suma Paul (Suma Baby), aged about 54 years, W/o. Late. Baby, (D/o. Late. Sri. T.M.Paulose), Pookkunnel House, Pothanikad, Kothamangalam Village, Kothamangalam Taluk, Ernakulam District.
19. Gracy Paul, aged about 62 years, W/o. Tomas Mathew, (Daughter of Late. T.M.Paulose), Panachamoottil Robin Villa Malakkara.P.O, Aranmula Village, Kozhenchery Taluk, Pathanamthitta District.
20. Lissy Daniel, aged about 57 years, W/o. K.C.Daniel, (Daughter of Late. T.M.Paulose), Kanyatharayil House, Chennithala P.O, Alappuzha District.

21. Thomas Mathew, S/o. Mathew, Vazhaparambil House, Vadakkekuri, Vazhappilly Muri, Changanassery.
22. Sophiyamma Philip, S/o. Late. Philip George, residing at Vettichira, Champakulam Village, Attavathal Muri, Kuttanadu Taluk, Alappuzha District.
23. George Philip, S/o. Late. Philip George, residing at Vettichira, Champakulam Village, Attavathal Muri, Kuttanadu Taluk, Alappuzha District.
24. Thomas.K.Philip, S/o. Late. Philip George, residing at Vettichira, Champakulam Village, Attavathal Muri, Kuttanadu Taluk, Alappuzha District.
25. Alex Philip, S/o. Late. Philip George, residing at Vettichira, Champakulam Village, Attavathal Muri, Kuttanada Taluk, Alappuzha District.
26. Reena Binoy, D/o. Philip, residing at Vettichira, Champakulam Village, Attuvathal Muri, Kuttanadu Taluk, Alappuzha District (W/o. Benoy, Kulaprathazhe House, Mukkoottuthara).
27. Annamma John, W/o. Late. Johny Mathew, Vazhapparambil, Malikayil House Changanasserry P.O, Near Boat Jetty, Changanasserry Village, Changanassery Taluk, Kottayam District, represented by power of attorney holder Sujamol John
28. Sujamol John. D/o. Late. Johny Mathew, Vazhapparambil, Malikayil House Changanasserry P.O, Near Boat Jetty, Changanasserry Village, Changanassery Taluk, Kottayam District.
29. Subin John, D/o. Late. Johny Mathew, Vazhapparambil, Malikayil House Changanasserry P.O, Near Boat Jetty, Changanasserry Village, Changanassery Taluk, Kottayam District, represented by power of attorney holder Sujamol John.

JUDGMENT DEBTOR 1 TO 8 AND 10 TO 15.

1. K.P.Babu, S/o. Paulose, aged about 42, residing at Theppala House, Koompanpara, Adimali, Pin 685561.
2. Johney, aged about 26. Employee, Goodland Plantation, Vattayar.P.O, Pallivasal Village, Devikulam Taluk.

3. Goodland Plantation, Vattayar P.O, Pallivasal Village, Devikulam Taluk, represented by its Manager.

D1 to D8 By Adv. Sri. Ajith Pottas

JD1 to 8 and 10 to 15 No vakalath (Exparte)

This petition filed Under Order XXI Rule106 and Section 151 of the CPC.

This petition coming on for hearing before me on 28.09.2024 in the presence of above counsel and the court on the same day passed the following:-

ORDER

This is an application filed by the Judgment Debtor 9 to set aside the exparte order in the above execution petition dated 12/08/2024.

Both sides represented. Heard. Judgment Debtor 9 had given opportunity to file objection from 30/11/2022 onwards, but no objection is seen as filed in the EP and Judgment Debtor 9 was absent on several posting and there was no representation. Counsel for Decree Holder filed objection in this EA, produced the decision of Hon'ble Supreme Court in 2005 KHC 1333 and also produced copy of Limitation Act Section 5 and Order 21 Rule 106 CPC.

Order 21 Rule 106 of the Code of Civil Procedure reads :- Setting aside orders passed exparte etc.

(1) The applicant, against whom an order is made under sub-rule (2) of Rule 105 or the opposite party against whom an order is passed exparte under sub rule (3) of that rule or under sub-rule (1) of Rule 23, may apply to the court to set aside the order, and if he satisfies the court that there was sufficient cause for his non-appearance when the application

was called on for hearing, the court shall set aside the order or such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.

Section 5 of the Limitation Act reads :-

Extension of prescribed period in certain cases :- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation – The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

In this case, the order of setting exparte of Judgment Debtor 9 was passed on

12/08/2024 and EA was filed only on 24/09/2024. Hence it is barred by limitation in view of Order 21 Rule 106. As per Limitation Act Section 5 extension of prescribed period is not applied to an application under Order 21 of CPC. In Damodharan Pilla and others v South Indian Bank Limited reported in 2005 KHC 1333, the Hon'ble High Court of Kerala observed : "*An application under S.5 of the Limitation Act is not maintainable in a proceeding arising under Order 21 of the Code. Application of the said provision has, thus expressly been excluded in a proceeding under Order 21 of the Code. In that view of the matter, even an application under S.5 of the Limitation Act was not maintainable. A fortiori for the said purpose, inherent power of the court cannot be invoked"*. In view of the decision of Hon'ble Supreme Court, EA 56/24 is liable to be dismissed. In the result this petition is dismissed.

Dictated to the confidential Assistant and typed by her, corrected and pronounced by me in open court on this the 28th day of September, 2024.

RESMI B. CHITTOOR
SUB JUDGE

APPENDIX
NIL

RESMI B. CHITTOOR
SUB JUDGE

Typed by : Jessim.E
Compared: Rejanimol.V.P

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