

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY.

Present:- Smt.Aswathy Nair, Munsiff.

Monday the 19th day of May, 2025/ 29th day of Vaisakha,1947

I.A No.05/2024 in O.S No. 31/2018

Between

Petitioners/
Plaintiffs

:1. Prabhakaran,
S/o.Narayanan,
Thayyil Thekkathil,
Maru Thekku Muri,
Ayanivelikulangara Village.

2. Rajendra Prasad,
S/o. Prabhakaran, -do -

By Adv.Sethukrishnan S.

And

Respondent

Ashokan @ Kuttan,
S/o. Gopinathan,
Madathil Thekkathil,
Padanayarkulangara Thekku Muri,
Karunagappally Village.
From: Koppara Vadakkathil,
Maru. Thekku Muri,
Ayanivelikulangara Village.

By Adv.

This petition filed u/o. 11 Rule 21 of CPC for striking of the defence of the defendant.

This petition coming on for hearing before me on 19.05.2025 and on the same day the court passed the following:-

ORDER

This petition has been filed by the 2nd plaintiff for striking off the defence of the defendant. Respondent is the defendant in the original suit.

2. The averments of the petition in brief as follows:- Petitioner is the 2nd plaintiff in this case and he filed this petition on behalf of the 1st plaintiff also. Petitioner has filed the present suit for declaring his right of easement by necessity over the plaint B schedule pathway. The plaint B schedule pathway is running through the property of the defendant. Hence the property of the defendant needs to be scheduled for the effective disposal of the case. Accordingly, petitioner has filed a petition before this court as IA 02/2022 to direct the respondent to produce the title deed and tax receipt of his property and said petition has been allowed on 24.11.2023 by this court by directing the defendant to produce the title deed and tax receipt of his property. However, till date the respondent did not produce the documents as directed by this court with an intention to delay the proceedings of this court. Subsequently, this court on 11.01.2024 has recorded in the order sheet about the disobedience of the respondent towards the order of this court. *“The counsel for the defendant submitted that he is intending to produce documents as directed in IA 02/2022. hence adverse inference is drawn against the defendant”*. This act of the defendant is a willful and deliberate violation of the order of this court. Hence, it will amount to contempt of court. Therefore this court may strike out the defence of the defendant, otherwise it will give an indication to the general public that any person can violate the order of this court. Hence this petition.

3. Respondent/Defendant filed objection contending as follows:- Petition is not maintainable either in law or on facts. After the filing of the written statement by the defendant, this court has framed issues on 02.07.2024 and now the case is

posted for Pre -Trial Steps. Plaintiffs have no case that plaintiff B schedule pathway is running through the property of the defendant. Plaintiff has never raised any such claim in his plaint. Defendant has specifically mentioned in the written statement that suit is bad for non-joinder of necessary parties and the same has been raised as first issue in this case. On 11.01.2024 this court has directed the plaintiff to produce revenue documents. However, plaintiffs did not produce the documents, hence issues were framed. Subsequently the case was posted for Pre-Trial Steps. Further the plaintiffs have filed IA 04/2024 for issuing a court certificate and IA 05/202 for striking of the defence. Plaintiffs are duty bound to prove their case. Without knowing these fundamental facts plaintiffs are unnecessarily filing petitions to delay the trial of this case. The documents which has been directed by this court to produce are public documents and the same can be obtained through filing an application before the authorities concerned. But plaintiffs did not take any steps to procure the documents through said methods. Instead, they have filed these petitions to drag the proceedings of this case. Defendant has never willfully violated the order of this court. According to plaintiffs, they are using the plaintiff B schedule pathway from 25.05.2000. Hence, it can not be believed that they are using the pathway without even knowing the fact that who is the owner of the pathway. Since this court has already raised issues, this court has to consider all the issues for the disposal of this case. Hence in such a situation the defence of the defendant cannot be struck out, if the same is happened it will cause irreparable loss and injury to the defendant/respondent. Hence the petition may be dismissed.

4. On the basis of the above pleading the only point is raised for consideration.

Is the petition is allowable?

5. Heard the learned counsel for both sides .

6. Point Nos. 1 to 4 :-- The specific contention of the petitioner is that vide order in IA 02/2022, this court has directed the defendant to produce the title deed and tax receipt of his property before this court for the purpose of scheduling it in the plaint. But even after giving the sufficient opportunities, the respondent did not produce the documents sought in the IA 02/2022. Hence, this court has drawn adverse inference against the defendant. Since the defendant willfully not complying with the order passed by this court, the defence of the defendant should be struck out under O.XI Rule 21 of CPC. On the flip side, the respondent contended that the petition is not maintainable. At this stage this court cannot strike out the defence of the defendant as the issues were already settled. The documents which have been sought to produce before this court can be easily obtained by filing Right to Information Application and other methods, but instead the plaintiff has filed IA 02/2022 with an intention to cause irreparable injury and loss to the defendant. It is further contended by the respondent that the petitioner has suppressed material facts before this court. On 11.01.2024 after drawing adverse inference against the defendant, this court also directed the plaintiff to produce the revenue documents. But they did not produce the documents, hence issues were framed. Once issues are framed, this court is bound to answer all the issues. Hence this petition is not

maintainable.

7. On perusal of the rival contentions, it is seen that as rightly pointed out by the learned counsel for the petitioner, this court has directed the defendant to produce the documents such as title deed and tax receipts of his property. But the respondent did not produce the document even after giving sufficient opportunities. Upon perusing the order in IA 02/22, it is seen that this court has directed the defendant to produce the documents under Order XI Rule.14. It is to be noted that this court can invoke the jurisdiction under Order XI Rule 21 of CPC, only if the other party has committed any willful and deliberate default in the matter of compliance of any directions issued under Order XI Rule 2 or under Order XI Rule 12 or under Order XI Rule 15 of CPC. In above three context only this court can strike out the defence of the defendant. But here in the case on hand, the order has been passed under Order XI Rule 14. Hence, Order XI Rule 21 cannot be applied. Moreover, it is settled law that once issues are framed, the court is bound to answer all those issues. Even-though preliminary issue of maintainability is raised and found against the court shall not refrain from answering other issues raised in the case. Here in this case issues are already been settled. Therefore the only option left for this court is to proceed to trial. Once issues have been settled parties with the litigation must be permitted to adduce evidence on the basis of those. Only after adducing evidence by both the sides in support of their pleadings, the court will be able to discharge his duty of adjudication of issues framed by it. Moreover undoubtedly this striking of defence is one of the drastic steps which can be taken only in extreme

situations. Hence on perusal of the facts and circumstances of this case I am of the view that once issues are framed by this court, this court cannot consider this petition. More over IA 02/2022 is allowed under Order 11 Rule 14 which will not come under the purview of the Order XI, Rule 21. This court can invoke the said power only on the non compliance of any directions issued under Rule 2,12 and 15 of Order XI of CPC. This view has been held by the **Honourable High Court in 2019 (1) KHC 593 Thundiyil Abdurahiman v. Asharaf Kalapeedikayil** , the extract is as follows:

“An incidental legal question also arises here as to whether a Civil Court taking notice of non - compliance of its order under Order XI R.14 can, by recourse to Order XI R.21, enforce its command by an order striking out the defence or dismissing the suit. Order XI R.21 is absolutely silent and does not confer any specific power in Courts in this regard. Nowhere in the Code also, any specific provision is made investing the Courts with the power to strike out or dismiss a suit in the event of disobedience of orders under Order XI R.14. Order XI R.21 of the Code is extracted as hereunder;

21. Non - compliance with order for discovery.-- ((1)) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made on such application accordingly, after notice to the

parties and after giving them a reasonable opportunity of being heard.

((2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.) Order XI R.21 expressly provides for enforcement of only certain kind of orders arising under Chapter XI of the Code. This provision does not take within its umbrella an order of production of document passed by the Court under Order XI R.14. In my opinion, having regard to the scheme and setting of Chapter XI of the Code, there is a conscious exclusion by the legislature of orders arising under Order XI R.14 from the province of Order XI R.21. The resultant legal conclusion emerging from the forgoing discussion is that the Court ordering production of document invoking its power under Order XI R.14 does not acquire any power either under Order XI R.21 and S.151 or any other provisions of the Code, to strike out the defence or dismiss a suit”.

8. In **Financial Corporation Tvm and Another v. M/s. Mas Hotel, Ernakulam in 2020 KHC 166** , it is held that “*It is clear from Order XI R.21 CPC that only when a party fails to comply with directions issued to answer interrogatories or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out and be placed in the same position as if he had not defended the case. Therefore, the power under Order XI R.21 C.P.C is strictly meant to be invoked only in the three situations enumerated under R.2, R.12 and R.15 of Order XI C.P.C and cannot be invoked in any other context”.*

9. In the light of above decisions, it is highly discerned that this court cannot strike out the defence of the respondent under Order XI Rule 21 for the non production of documents under Order XI Rule 14. Hence this petition can not be allowed.

In the result petition dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 19th day of May, 2025)

Sd/-
Aswathy Nair
Munsiff.

Appendix: Nil.

Id/-
Munsiff.

//True Copy//

MUNSIFF.

Typed by : Rekha P.R.
Compared by :