

**IN THE COURT OF ADDL. DISTRICT JUDGE -1
KOTTAYAM**

Present:- Smt. Lilly K, Addl. District Judge-I

Thursday 30th day of April, 2026
10th Vaisakha, 1948

CMA Nos. 16/2023 & 36/2023

CMA No. 16/2023

**Appellant/
Defendant**

Lukson Fransis Augustine,
Aged 43 years,
S/o. Late K.F. Augustine
permanently residing at 25
Charleston Close Sale Cheshire
Greater, Manchester, M 33,
4 U.S United Kingdom Now residing
at Kallumadickal House,
Thuruthi P.O., Kurichy Village,
Changanacherry,
Kottayam- 686535.
(By Adv. Shaji Varghese)

**Respondent/
Plaintiff**

Fr. George Joseph,
aged 60 years,
Cheerankuzhi House,
Edamaruku P.O.,
Erattupetta, Pin- 686 586
now residing at Wilbraham Road,
M14 7DW, United Kingdom.

(By Adv. Saji S Nair)

**Civil Miscellaneous Appeal filed under Order XLIII Rule 1 (d) of the
Code of Civil Procedure challenging the order in IA No.2/2022 &
I.A.No. 3/2022 in O.S.64/2014 dated 25.01.2023 of the Addl.Sub
Court, Kottayam .**

Between

**Petitioner/
Defendent:**

Lukson Fransis Augustine,
Aged 42 years,
S/o. Late K.F. Augustine
permanently residing at 25
Charleston Close Sale Cheshire

greater, Manchester, M 33,
4 U.S United Kingdom Now
residing at Kallumadickal House,
Thuruthi P.O., Kurichy Village,
Changanacherry,
Kottayam-686535

(By Adv.Kishorekumar M V)

And:-

**Respondent/
Plaintiff**

Fr. George Joseph,
aged 60 years,
Cheerankuzhi House,
Idamaruku P.O., Erattupetta
now residing at Willbraham Road
M14 7DW, United Kingdom.

(By Adv. Sathyavan Nair)

CMA No. 36/2023

**Appellant/
Defendant**

Lukson Fransis Augustine,
Aged 43 years,
S/o. Late K.P. Augustine
permanently residing at
Charlestron Close, Sale Cheshire
Greater, Manchester, M 33,
4 U.S United Kingdom Now residing
at Kallumadickal House,
Thuruthi P.O., Kurichy Village,
Changanacherry, Kottayam-
686535.

(By Adv. Shaji Varghese)

**Respondent/
Plaintiff**

Fr. Geroge Joseph,
aged 60 years,
Cheerankuzhi House,
Idamaruku P.O.,
Erattupetta, Pin- 686586
now residing at Willbraham Road,
M14, 7DW, United Kingdom.

(By Adv.Saji S Nair)

Civil Miscellaneous Appeal filed under Order XLIII Rule 1 (d) of the Code of Civil Procedure challenging the order in IA No.2/2022 in O.S.64/2014 dated 25.01.2023 of the Addl.Sub Court, Kottayam .

Between

**Petitioner/
Defendant :**

Lukson Fransis Augustine,
Aged 42 years,
S/o. Late K.P. Augustine
permanently residing at
Charlestron Close Sale Cheshire
greater, Manchester, M 33,
4 U.S United Kingdom Now
residing at Kallumadickal House,
Thuruthi P.O., Kurichy Village,
Changanacherry, Kottayam-
686535.

(By Adv.Kishorekumar M V)

And:-

**Respondent/
Plaintiff:-**

Fr. Geroge Joseph,
aged 60 years,
Cheerankuzhi House,
Idamaruku P.O., Erattupetta
now resding at Willbraham Road
M14 7DW, United Kingdom.

(By Adv. Sathyavan Nair)

These Civil Miscellaneous Appeals having been finally heard on 20.04.2026 and the court on 30.04.2026 delivered the following:-

COMMON JUDGMENT

Civil Miscellaneous Appeal No.16/2023 was filed by defendant under Order XLIII Rule 1(d) of CPC, challenging order dated 25.01.2023 in IA No.2/2022 and 3/2022 in OS No.64/2014 of Additional Sub Court, Kottayam.

2. Respondent/plaintiff filed OS No.64/2014 against defendant/ appellant for decree, declaring that foreign judgment dated 15.04.2011 passed by Manchester County Court against defendant/appellant for realisation of money was enforceable in India. The suit was decreed ex-parte on 07.11.2016. Appellant/defendant filed application as IA No.1705/2016 on 11.11.2016 for setting aside decree. The petition was allowed on 13.06.2018 on payment of cost. The cost was not paid within the time directed and IA No.1705/2016 was dismissed by Additional Sub Court on 26.06.2018.

3. Defendant/appellant filed IA No.3/2022 to restore IA No.1705/2016, alleging that the defendant was out of station as part of his work. He was ready to pay the cost and sought to restore IA No.1705/2016. IA No.2/2022 was filed alleging

that he was in UK and had to change his previous lawyers and came to know the order only prior to 17.11.2022. Defendant sought to condone the delay of 1695 days in filing IA No.3/2022.

4. Plaintiff/respondent objected the applications.

5. After hearing both sides, the applications were dismissed by the Sub Judge on 25.01.2023.

6. Aggrieved by the order in IA No.2/2022 and IA No.3/2022, CMA No.16/2023 was filed by the defendant with an application for condoning the delay of 16 days. The delay was condoned and CMA No.16/2023 was admitted. It was contended by the defendant/ appellant that he could not file a written statement in the suit, as he was in United Kingdom and could not give instructions to his counsel, on account of his busy engagements at United Kingdom as he was engaged in IT business and did not get sufficient time to visit Kottayam. It was claimed that there was no willful laches or negligence on the part of the defendant. It was also contended that the foreign judgment dated 15.04.2011 was set aside by Manchester County Court on 24.08.2011, on the basis of an Individual Voluntary Arrangement No.3588/2009 and

3589/2009 passed on 07.01.2010 under Insolvency Act, 1986 and all unsecured creditors are bound by the terms of the arrangement under Section 260 of the Insolvency Act, 1986. Respondent/plaintiff was creditor No. 11 in the Individual Voluntary Arrangement. There is no relationship existing between creditor and debtor after the individual voluntary arrangement and no financial liability existed between plaintiff and defendant. Plaintiff obtained the decree by playing fraud. The foreign judgment was not in existence on the date of filing of the suit and the date of passing of the judgment. As the defendant was a UK citizen, having overseas India citizenship card, he could not effectively conduct the suit and did not get an advice to file written statement in the suit. Even then he voluntarily approached the court and produced judgment and order of Manchester County Court. Appellant sought to give opportunity to conduct the suit in the interest of justice and hence the appeal. Appellant sought to set aside the impugned order in IA No.2/2022 and IA No.3/2022, dated 25.01.2023 in O.S.No.64/2014.

7. The same appellant/defendant filed CMA No.36/2023 on 03.06.2023, under Order XLIII Rule 1(d) of CPC, challenging order dated 25.01.2023 in IA No.2/2022 (delay condonation

petition) in OS No.64/2014; with an application for condoning the delay of 85 days in filing the appeal, on the very same grounds alleged in CMA No.16/2023. The delay was condoned and appeal was admitted. It was contended that even though the delay was stated in IA No.2/2022 in OS No.64/2014 as 1659 days, the actual delay was only 863 days and the limitation started only on 27.07.2018. The restoration petition IA No.3/2022 was filed on 17.11.2022. According to the appellant, the period starting from 15.03.2020 to 28.03.2020 could be excluded in view of COVID-19 pandemic, as per the direction of the Hon'ble Supreme Court. The appellant came to know the dismissal of the restoration petition, IA No.3/2022 for non-payment of costs; only when he came to India in November 2022. The appellant could not pay the cost of ₹2,000/- within 10 days, as the order was not communicated by the advocate to the appellant, who was in UK. Appellant sought to set aside the order dated 25.01.2023 in IA No.2/2022, delay petition and sought to restore IA No.1705/2016 by allowing IA No.3/2022 in OS No.64/2014.

8. Heard both sides and perused the records. The parties are hereinafter referred with respect to their status in the suit.

9. The following points arise for consideration.

- 1) Whether the appeals are maintainable?
- 2) Whether there is sufficient ground to condone the delay of 1695 days in filing IA No.3/2022 and to restore IA No.1705/2016?
- 3) Relief and costs.

10. Point No.1 and 2: According to the learned counsel for the appellant/defendant, the suit OS No.64/2014, filed on the basis of foreign judgment dated 15.04.2011, was set aside by Manchester County Court on 24.08.2011. The suit was fraudulently filed for enforcing the foreign judgment. Defendant was in UK and could not instruct the counsel to file written statement, even though summons was received and ex-parte judgment was passed on 07.11.2016. The application for setting aside ex-parte decree was filed on 11.11.2016, as IA No. 1705/16. The application was allowed on payment of cost of ₹2,000/- to the plaintiff on 13.06.2018. As the appellant was in UK and did not get intimation regarding the order from the counsel, the cost could not be paid within 10 days. Hence IA 1705/2016, application for setting aside ex-parte decree was dismissed on 26.06.2018. It was argued that the execution petition was posted for delivery and the Hon'ble High Court

had stayed the delivery of the property, in view of the pendency of these appeals. According to the learned counsel, defendant would have paid the cost, if he got intimation from the counsel. There was no default on his part in not paying the cost in IA No.2/2022. Learned counsel submitted that the appellant was abroad and the non-payment of costs within 10 days was not willful. Learned counsel sought to set aside the Order dated 25.01.2023 in IA No.2/2022 and 3/2022 and to restore IA No.1705/16, in the interest of justice, giving an opportunity to the defendant to defend the suit on merit.

11. Learned counsel for respondent/plaintiff argued that no documents were produced by the defendant to show that the foreign judgment was set aside by the Manchester County Court as argued. No documents were also produced to show that the debt was discharged by the defendant at any point of time. It was also argued that the contentions in the appeal memorandum are false. Defendant who received summons had chosen not to contest the suit. According to the learned counsel, there was no ground to condone the inordinate delay of 1695 days in filing IA No.3/2022. Even if the period of COVID-19 pandemic is excluded, the remaining delay, in filing

the application was also inordinate. No satisfactory explanation was given by the appellant for non-payment of costs imposed in IA No.1705/16. Learned counsel argued that plaintiff became the auction purchaser in EP No.68/2021 and sale certificate was obtained on 19.03.2021 and the appeals have been filed to delay the delivery of property in execution. Defendant brought his mother to the house in the property in sale certificate to obstruct the delivery. Application for delivery is pending from 12.08.2021. Defendant was at Kottayam during October 2021 and he became accused in Crime No.3840/2021. Learned counsel sought to dismiss the appeals.

12. The records reveal that the foreign judgment was passed on 15.04.2011. The suit based on foreign judgment was filed on 21.05.2014, after vacation period within the time. Defendant's address at Changanassery and the address at United Kingdom were shown in the plaint. Defendant had no case that summons was not served in the suit. It was contended in the appeal memorandums that defendant did not get instruction from counsel to file written statement and he was abroad. In CMA No.36/2023, it was contended that he

produced documents in the suit. Thus the specific contention of the defendant in the appeals is that no written statement was filed. But as per judgment in OS No.64/2014, in paragraph 2, it was clearly stated by the learned Sub Judge that “the defendant who filed written statement in the case remained ex-parte, when the case was taken up for trial in the list on 04.11.2016”.

13. Admittedly, the suit was decreed on 07.11.2016, and the defendant did not contest the proceedings. Application for setting aside ex-parte decree, IA No. 1705/16 was filed on 11.11.2016, within 5 days, by the defendant. Thus it is clear that the defendant was in India during November 2016. It is also an admitted fact that the application to set aside ex-parte decree, IA No.1705/16 was allowed on cost on 13.06.2018. The application was posted for payment of costs. But the defendant did not pay the costs and IA No.1705/16, was dismissed on 26.06.2018, for non-payment of cost.

14. Defendant contended that the dismissal of the application to set aside the ex-parte decree on 26.06.2018; came to his knowledge only in November 2022 when he came to India. IA No.3/2022 application to restore IA No.1705/16

was filed on 17.11.2022 with IA No.2/2022 application for condoning delay of 1695 days. Plaintiff contended that defendant was aware of the proceedings and the delay was not satisfactorily explained.

15. Records also reveal that after dismissal of IA No.1705/16 on 26.06.2018, plaintiff filed execution petition in 2021. Thereafter, the property of the defendant was sold in auction for realization of the decree amount of ₹ 16,84,700/- and cost and plaintiff became the auction purchaser. Sale certificate was also obtained by plaintiff. When application was filed for delivery of the property in execution; IA No.3/2023 and IA No.2/2023 were filed by the defendant.

16. The records reveal that defendant filed OP(C)No.1602/22 for staying the execution of the decree in EP 68/2021 and as per Order dt 26.8.2022, the delivery of the property was stayed in view of the filing of Civil Miscellaneous Appeals. Defendant also filed OP(C)No.1031/2023 and as per judgment dated 14.02.2024, there was direction to dispose of CMA No.16/2023 and 36/2023. My learned predecessor as per judgment dated 19.07.2024, dismissed the appeals.

17. Defendant filed OP(C)No.626/2025 before the Hon'ble

High Court and as per judgment dated 09.02.2026, the judgments in CMA 16/2023 and 36/2023 dated 19.07.2024 of this Court were set aside and this Court was directed to dispose of the appeals within one month of receipt of certified copy of the judgment in OP(C)No.626/2025. The order was received by email and the certified copy is not received so far. Notice was issued to the respondent's counsel, who appeared. Appellant's counsel was no more and notices were repeatedly issued to the appellant/defendant; whose presence could be secured only on 31.03.2026. Fresh vakalath was filed and a new counsel was appointed by the appellant/defendant to argue the appeals.

18. The main argument of the counsel for appellant/defendant is that the order dated 13.06.2018 directing to pay costs while allowing IA No.1705/16 was not communicated to the defendant, who was in UK and he came to know the order only when he came back in November 2022. But the records reveal that appellant/defendant was aware of the execution proceedings filed in 2021. He had filed OP(C)No. 1602/22 before the Hon'ble High Court to stay the execution proceedings and order was passed on 26.08.2022.

CMA No.16/2023 was filed on 27.03.2023 and CMA No.36/2023 was filed on 03.06.2023. Both the appeals were filed with delay petitions and the delay were condoned. Even though the exclusion from limitation for the period during the COVID-19 pandemic was not pleaded in IA No.2/2023 the appellant in CMA No.36/2023 claimed that the actual delay was only 863 days. The argument of the appellant/defendant to exclude the period of COVID-19 pandemic from the total delay of 1695 pleaded in IA No.2/2022 cannot be accepted, especially in view of the fact that IA No. 1705/16 was dismissed on 26.06.2018, due to non-payment of costs imposed on 13.06.2018. That order could have been challenged by filing Civil Miscellaneous Appeal before 27.07.2018. But no Civil Miscellaneous Appeal was filed challenging order dated 26.08.2018 in IA No. 1705/16.

19. The period for filing a Civil Miscellaneous Appeal, challenging order in IA No.1705/16 expired on 26.07.2018. Without challenging the order in IA No.1705/16, defendant chose to file IA No.3/2022 and IA No.2/2022 only on 17.11.2022. The period for challenging order dated 26.06.2018 in IA No.1705/16 expired in July 2018. The Hon'ble

Supreme Court granted exclusion in counting the period of limitation from 15.03.2022 in cases where the period of limitation expired during the COVID -19 pandemic period from 15.03.2020 to 28.02.2022. A further grace period of 90 days was also granted.

20. The appellant/defendant cannot claim the benefit of the Order of Hon'ble Supreme Court as the period for challenging order dated 26.06.2018 in IA No.1705/16, either by way of filing appeal or by filing application to review the order or to restore the application expired in July 2018. In the said circumstances, the actual delay for filing IA No.3/2022 is about 4½ years.

21. It was admitted in IA No.2/2022 that the delay was 1695 days. The question is whether the defendant satisfactorily explained the delay in filing IA No.3/2022. The best document to prove the defendant's absence in India upto November 2022, as claimed in the Civil Miscellaneous Appeals, is the passport of the defendant. But the same was not produced either in IA No.2/2022, the delay petition, or in the present appeals. On the other hand, plaintiff contended that the defendant was in Kottayam from October 2021 onwards and

he did not go back and got involved in a criminal case. The foreign judgment was dated 15.04.2011 and if the same was set aside in 2011 itself, the defendant who received summons and filed written statement could have produced the alleged order dated 24.08.2011 of County Court, Manchester, in support of the claim. Not even a copy of such an order, dated 24.08.2021 was produced in the present appeals. No evidence was adduced by the defendant in IA No.2/2022 and false contentions was raised in both the CMAs that written statement could not be filed. But the original judgment in OS No.64/2014 revealed that defendant received summons and filed written statement and thereafter did not defend or contest the suit, which resulted in passing ex-parte decree.

22. The passing of ex-parte decree and filing of execution petition was within the knowledge of the defendant/appellant who filed OP(C)No.1602/22 and obtained Order dated 26.08.2022, staying the delivery of the proceedings. Considering the entire facts and circumstances and the records available, it is found that the defendant could not satisfactorily explain the delay in filing IA No.3/2022, which is more than 4 years. IA No.1705/16 was allowed on 13.06.2018

and Rs.1,000/-, the cost imposed in IA No.1705/16 could have been sent by money order; cheque or demand draft to the court and physical presence of the appellant/defendant was not required to pay the cost imposed. Without even producing copy of the passport, and without pleading exclusion of period of limitation during COVID-19 pandemic, and after having admitted delay of 1695 days in IA No.2/2022, defendant cannot claim that the actual delay was only 863 days, especially for the reason that the limitation period for challenging Order dated 26.06.2018 in IA No. 1705/2016 expired in July 2018, much prior to the COVID-19 pandemic. In the said circumstances, I find no grounds to disagree with the view taken by the learned Sub Judge; that applications were filed to delay the execution proceedings. Hence there is no ground to interfere with the order dated 25.01.2023 in IA 3/2022 and IA 2/2022 in OS 64/2014.

23. Both these appeals were filed under Order XLIII Rule 1(d) of CPC. As per Order XLIII Rule 1, "an appeal shall lie from the following orders under the provisions of Section 104, namely, (d) an order under Rule 13 of Order 1X: rejecting an application in a case open to appeal, or an order to set aside

the dismissal of a suit". It is true that Order dated 26.06.2018 would come within the purview of Order No. XLIII Rule 1(d), as the application filed to set aside ex-parte decree was dismissed, due to non-payment of costs. But, IA No.3/2022 was an application to restore IA No.1705/16 by condoning delay of 1695 days in filing IA No.3/2023. Order dated 25.01.2023 in IA No.3/2022 and No.2/2022 do not come within the purview of an application under Order IX Rule 13. As such, no appeal can be filed under Order XLIII Rule 1(d), challenging Order dated 25.01.2023. Hence, both the appeals are not maintainable under Order XLIII of CPC, before this Court. The order in IA No.2/2022 and IA No.3/2022 were challenged in CMA 16/2023. During the pendency of that appeal, CMA 36/2023 was also filed without disclosing the filing of CMA 16/2023 seeking same relief . Hence CMA 36/2023 was also not maintainable .

24. Considering the entire facts and circumstances, it can only be found that the defendant failed to satisfactorily explain the delay of 1695 days in filing IA.3/2022. Both the appeals are not maintainable under Order 43 Rule 1(d) of CPC. Hence, Point No.1 and 2 are found against the defendant/appellant.

25. Point No.3: In view of the findings in Point No.1 and 2, defendant/appellant is not entitled to any relief and both the appeals are dismissed.

In the result, both the appeals are dismissed conforming order dated 25.01.2023 in IA 3/2022 and 2/2022 in OS 64/2014 with the cost of respondent/plaintiff.

Dictated to and typed by the Dictation Software, corrected and pronounced by me in open Court, on this the 29th day of April, 2026.

Sd/-
Lilly K.
Addl. District Judge-I
Kottayam

APPENDIX- NIL

Id/-
Addl. District Judge-I

//True Copy//

Copied by:
Compared by:

Sd/-
Lilly K.
Addl. District Judge-I
Kottayam