

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

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

Thursday the 12th Day of March, 2026
21st Phalguna, 1947

I.A. No.1/2026 in CMA 63/2025

Petitioner/Appellant:-

P.A.Prakash, aged 54 years,
S/o. Appukuttan,
Vadakkedathu house,
Kadanadu Kara
Vellilappally Village,
Meenachil Taluk,
Kottayam District

By Adv. P.V.Joseph

**Counter Petitioners/
Respondents:-**

1. Leena Jaimon,
aged 51 years,
W/o. Jaimon Jose,
Korattiyil house,
Poovarani P.O.,
Uralikunnam Kara,
Elikulam Village

2. Jose Thomas,
aged 56 years,
S/o. Sebastian,
Chovvattukunnel House,
Nariyanganam P.O.,
Melamppara kara,
Talappalam Village,
Meenachil Taluk,
Kottayam District

R1 by Adv. George Kutty C.A
R2 by Adv. M.Narendra Kumar &
Adv. K.T.Jacob

Petition filed under Order XLI Rule 5 of Code of Civil
Procedure .

This petition is filed to stay the operation of the impugned order in I.A No. 684/2017 and the further proceeding in I.P No. 3/2008 before the Sub Court Pala till the disposal of the appeal.

This petition having been coming up for consideration before this Court on 07.03.2026 and the court on 12.03.2026 passed the following :-

ORDER

Application filed by the appellant under Order XLI Rule 5 of the Code of Civil Procedure.

2. Appeal was filed against Order in IA No.684/2017 in IP No.3/2008 of Sub Court, Pala. An application was filed under Section 58 of Kerala Insolvency Act for appointment of receiver for taking possession of the properties of the first respondent, who was adjudicated as insolvent. The trial Court dismissed IP No.3/2008. Appellant who was the creditor filed CMA No.68/2016. The appeal was allowed and the first respondent was declared as insolvent as per Order dated 29.06.2017. Thereafter, IA No.684/2017 was filed on 17.08.2017 before Sub Court, for appointing receiver to take possession of

the insolvent's property. IA No.683/2017 was filed for publication in the Gazette under Section 31 of the Insolvency Act with draft for publication. The first respondent had fraudulently transferred her immobile properties in favour of respondent No.2 within 3 months before the filing of insolvency petition on 18.02.2008 attracting Section 54 of Insolvency Act, which is liable to be annulled at the instance of the receiver to be appointed after order of adjudication. A composite order was passed in CMA No.68/2017 adjudging the first respondent as insolvent. The fraudulent transfers as per Exhibit A1 and Exhibit A2 sale deeds were also annulled. Second respondent challenged the order in CMA No.68/2016 by filing CRP No.515/2017 and the order in IP No.3/2018 was stayed. The Revision Petition was disposed on 17.12.2019, wherein, the adjudication of first respondent as insolvent was confirmed by finding that the receiver could institute application for declaring the fraudulent transfer annulled. Sub Court heard the matter and IA No.684/2017 was dismissed by finding that "petitioner did not file application for annulment under Section 54 of Insolvency Act and the time for doing so had long expired" as if there was limitation for instituting proceeding under Section 54 of Insolvency Act. Appellant sought to stay the operation of the

impugned order and further proceedings before the Insolvency Court in IP No.3/2008, till the disposal of the appeal.

3. First respondent filed objection, contending that the receiver application filed as IA No.684/2017 was dismissed and there is no ground to stay the order in the application. There were no grounds to appoint a receiver as part of the insolvency proceedings. The application has been filed to harass the first respondent. The appellant did not take steps within the time, after the order of adjudication and there is no scope for allowing the appeal. The first respondent sought for dismissal of the application.

4. Heard both sides.

5. The only point to be considered is:

Whether the application can be allowed?

6. The Point:- According to the learned counsel for the petitioner/appellant; the creditor, filed the insolvency petition against the first respondent who fraudulently transferred immovable properties as per Exhibit A1 and Exhibit A2 in favour of second respondent. First respondent was adjudged as insolvent. The appellant/creditor filed IA No.684/2017 for

appointment of receiver after the disposal of CRP No. 515/2017 for taking possession of the immobile properties of the first respondent who fraudulently transferred it in favour of second respondent. Unless the proceedings are stayed, the appellant will be put to irreparable loss and injury, as the insolvency petition is still pending before the Sub Court, Pala. Learned counsel submitted that there is no limitation prescribed under the Insolvency Act for filing application for appointment of receiver. According to the learned counsel, if the insolvency proceedings now pending before the Sub Court, Pala are closed or dismissed, the petitioner/appellant will be put to irreparable loss and damages. Learned counsel sought to stay the proceedings before the Sub Court.

7. Learned counsel for first respondent submitted that the receiver application was dismissed as no steps was taken within the time by the appellant and there was no ground to stay the proceedings before the Sub Court. It was also submitted by the learned counsel that the second respondent had filed CMA No.1/2026 against the order of attachment before District Court with a delay petition and the same was pending for disposal and both the cases have to be considered together.

8. The averments in the affidavit and the impugned order revealed that insolvency petition was allowed by the District Court Exhibit A1 and Exhibit A2 documents were annulled and respondent was declared insolvent in CMA No.68/2016. The order was challenged by respondent No.2, by filing CRP 515/2017. CRP was disposed on 17.12.2019, confirming the order of adjudication against respondent No.1. But the annulment of Exhibit A1 and Exhibit A2 documents were held to be within the domain of the receiver to be appointed. Thereafter IA No.684/2017, receiver application was filed by the appellant.

9. It is revealed that the second respondent, the subsequent transferee filed CMA No.1/2026. Learned counsel for appellant submitted that that appeal was filed against the order of attachment and it has nothing to do with the present appeal which was filed against the dismissal of receiver application. According to the learned counsel, there was no scope for considering both the appeals together and the proceedings in the Insolvency Court has to be stayed till the disposal of this appeal.

10. Considering the facts and circumstances, it is found that two CMAs are pending and the receiver application filed by the

appellant has been dismissed. The proceedings in IP No.3/2008 are still pending and considering the said fact, it is found that further proceedings in IP No.3/2018 can be stayed till the disposal of this appeal, in the interest of justice. Hence the point is found accordingly in favour of the appellant.

In the result, the application is allowed. The further proceedings in IP No.3/2018, before the Sub Court, Pala and the operation of impugned order in IA No.684/2017 stayed till the disposal of this appeal. No order as to costs.

Dictated to and typed by the Dictation Software, corrected and pronounced by me in open Court, on this the 12th day of March, 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