

IN THE COURT OF THE MUNSIFF OF TIRUR

PRESENT: Sri. SANU C., MUNSIFF.

Saturday, the 21st day of December, 2024
the 30th day of Agrahayana, 1946

INTERLOCUTORY APPLICATION No.6 OF 2024
IN ORIGINAL SUIT No.190 OF 2019

Between:

1. Jamsheer, S/o. Madhukkal Abdul Razak,
2. Jasna, W/o. Madhukkal Jamsheer,
Petitioners are residing at Thriprangode amsom desom
Thriprangode P.O., Tirur Taluk, PIN 676 108
represented by Power of Attorney Holder Rubeena

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Petitioners/
Defendants

And:

Rajamani, S/o. Ramaswami Kodavath,
Naduvilangadi, Tirur amsom desom,
P.O. Pookkayil Bazar, Tirur Taluk, PIN 676 107.

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Respondent/
Plaintiff

This petition coming on this day for hearing before me in the presence of Sri.K. Vipin, Advocate for the petitioner and of Sri. P.Viswanathan and of Sri. Jubin Mohamed, Advocates for the respondents and the court passed the following;

ORDER

This is an application filed for summoning the concerned officers to produce the documents and permission to examine the officer.

2. **The case of the petitioner is as follows:** The petitioner is the power of attorney holder of the defendant in the aforesaid suit. The suit is posted for trial. It is contended that there is no material transaction between the plaintiff and the defendants as alleged in the plaint. As mentioned in the written statement, Afzal, the

brother of 1st defendant, has made several payments on behalf of the 1st defendant in the name of the plaintiff in the account No.913010015994457 of Axis Bank, branch, Tirur. In order to prove this, it is essential to bring the account statement from 1st July 2017 to 31st August 2019 before the court. Hence, it is also necessary to issue a witness summons to the Bank Manager of Axis Bank, Tirur Branch to produce the account details from 1st July 2017 to 31st August 2019. Hence, the petition

3. Respondent/plaintiff opposed the application and filed counter stating that there is no bonafides in the petition and is not maintainable in law. This petition is highly belated. Such a petition has been filed months after the trial of both the parties. The only intention of the petitioners is to somehow prolong the judgment in the case. No sufficient reasons have been given in the petition for not producing the witness list before the trial. Respondent further contended that if money was paid into his account as stated in the petition, the extract of account of the person who paid the money must be presented to prove it, not the extract of account of the respondent. The documents cited in the petition are not necessary to prove the arguments made in the petitioner's written statement. Hence the petition is liable to be dismissed.

4. Heard. Perused the records and affidavit.

5. Point for consideration is :-

Whether the petitioner is entitled to an order as prayed for ?

6. It is pertinent to note that the contention raised by the respondent is on twofold. First one is the application is highly belated and other is there is no pleading as to repayment through the account of 2nd defendant. Even if, anything had so the same has to be proved by producing the account statement of the petitioner himself and not by this respondent.

7. By virtue of Order 16 Rule 1, the witness list shall file within 15 days after settlement of issues. But the court may after recording the reason permit a party to call any witness other than those whose names appear in the original witness list, if such party shows sufficient cause for the omission to mention the name of such witness in the list. The argument of the learned counsel for the respondent as to the repayment of money not pleaded in the written statement is false. The repayment is specifically pleaded in the written statement. The learned counsel for the petitioner argued that during the cross examination of PW1, it is admitted that some payments had done through the Axis Bank account. In order to prove the amount paid through that account examination of the Bank Manger and account statement of the respondent is necessary.

8. The reason stated in the application for the delay caused seems justifiable. The counter argument as to the production of account statement of petitioner himself does not disclose the transaction through the account of respondent. In that context, this court is of the view that the attribution of non-diligence for inclusion of the witness in the original witness list is inappropriate. Hence this court is inclined to allow the petition.

In the result, petition is allowed.

(1) The IA is allowed. The Branch Manager of Axis Bank, Tirur is directed to appear personally as witness and to produce the account statement of Mr.Rajamani bearing account No.913010015994457 for the period 1st July, 2017 to 31st August,2019.

(2) Issue summons.

(3) No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 21st day of December, 2024).

MUNSIFF.

Typed by : Ashamini P.
Compared by :1. 2.

Fair Order in IA 6/2024 in OS.190/2019,
Dated. 25-01-2020
