

IN THE COURT OF THE MUNSIFF-MAGISTRATE OF PONNANI
Present:- Smt. Sowmya T.M., Munsiff- Magistrate, Ponnani.

Monday, the 17^h day of November 2025
the 26th day of Karthika 1947

INTERLOCUTORY APPLICATION No7/2025
IN ORIGINAL SUIT No.184/2020

Between:-

Komathu Kunhava, 69 years, S/o.Kunнанayil
Mohammedunni, Perumpadappu amsom, desom, : Petitioner/
Ponnani Taluk respondent

And:-

- 1 Vyaparavijayam Trades & Agencies Private Ltd,
Adam Bazar, Rice Bazar Road, Thrissur : Respondents/
2 Represented by Its Chairman, Abi Anto, 48 years, Plaintiffs
S/o.Mookan M.D.Antony, Thrissur Taluk, Chempukkavu
Village, Paravattani Desom, Thrissur District

This petition coming on this day for final hearing before me in the presence of Sri.Showketh Babu.R.K., Advocate for the petitioner/respondent and Sri.N.A.Joseph., Advocate for the respondents/plaintiffs and this Court passed the following:-

ORDER

The Defendant in the suit has filed this interlocutory application under section 151 of the Civil Procedure Code, 1908.

Munsiff-Magistrate

2. The averments in the petition, in brief, are as follows: The Petitioner is aged about 69 years and is suffering from heart-related diseases, frequently resulting in memory loss, which makes him medically unfit to appear and give evidence effectively. The Petitioner's son, Muhammed Shebil, has personal and direct knowledge regarding the transactions and contentions involved in the suit and counterclaim. Muhammed Shebil is currently working overseas and is expected to return to India only in January 2026. Therefore, the Petitioner prays for the case to be adjourned and the trial/evidence fixed for January 2026, and for permission to produce his son as a witness.

3. The Respondent/Plaintiff opposed the application, contending that since the Petitioner himself filed the application, the claim of frequently losing his memory is contradictory, and hence the petition should be dismissed.

4. Point for Determination

1. Is the Petitioner/Defendant entitled to an order allowing the adjournment of evidence and permitting evidence to be adduced through his son, Muhammed Shebi, as prayed for?

Sd/-
Munsiff-Magistrate

5. The Court has heard the learned counsel for both sides and perused the records.

6. The Point: The main suit is for the realization of a total amount of ₹ 3,00,000/-(Three Lakh rupees only) (comprising ₹ 2,00,000/- allegedly given as an advance and ₹ 1,00,000/-(One Lakh Rupees Only) allegedly spent on a shop room), along with interest, and for a declaration that the Respondent/Plaintiff is not the tenant of the petition schedule shop room. The Petitioner/Defendant has filed a Written Statement with a Counter Claim. The primary object of the Court is to ensure that a just and fair opportunity is provided to all parties to establish their respective cases.

7. The Petitioner is stated to be aged about 69 years and suffering from ailments that purportedly affect his memory. While the Respondent objects to the memory loss claim, the Court must be mindful of the advanced age of the litigant and the potential health difficulties in attending and giving evidence, especially when a substantial counter claim is also involved.

8. The Petitioner is seeking to adduce evidence through his son, who is alleged to have direct and personal knowledge of the transactions.

The son, in this context, would be examined as a witness *on behalf of* the Petitioner/Defendant. While the party himself (the Petitioner) is generally the best person to testify, under Order III Rule 2 of C.P.C., a recognised agent can act for a party, and under the Indian Evidence Act, any person having personal knowledge of the facts of the suit is a competent witness. Considering the Petitioner's health and age, and the assertion that the son has direct knowledge, the Court is of the view that the Petitioner can be permitted to adduce evidence through his son to safeguard his rights, particularly concerning the counter claim filed by him. Since the son is currently overseas and is expected to return in January 2026, an adjournment until that time is necessary to facilitate the production of this crucial witness. Thus, the Court is inclined to allow the petition in the interest of justice. However, granting a long adjournment will cause hardship and delay to the Respondent/Plaintiff, who instituted the suit. Therefore, to compensate the Respondent for the delay and inconvenience, the order must be passed subject to the payment of costs. This point is answered accordingly.

In the result,

Sd/-
Munsiff-Magistrate

1. The Interlocutory Application (I.A. No. 7 of 2025) is allowed and, the suit is removed from the current list and the evidence of the Defendant is adjourned to January 2026.
2. The Petitioner/Defendant is permitted to adduce evidence through his son, Muhammed Shebi, during the next posting.
3. This order is granted subject to the statutory condition that the Petitioner/Defendant shall pay a cost of ₹ 2,000/- (Rupees Two Thousand only) to the Respondent/Plaintiff within one week from today.
4. If the cost is not paid, this petition shall stand automatically dismissed.

(Dictated to the Confidential Assistant transcribed by her, corrected by me, and pronounced in open court this the 17th day of November , 2025).

Appendix: Nil

/True copy//

Sd/-
Munsiff-Magistrate

Sd/-
Munsiff-Magistrate

Munsiff-Magistrate

Copy of/ *Fair order in*
IA.7/2025 in
OS.184/2020
dated: 17/11/2025

Sd/-
Munsiff-Magistrate