

IN THE COURT OF THE SUBORDINATE JUDGE, IRINJALAKUDA

Present:- Rema R K, Principal Sub Judge

Saturday, the 6th day of June, 2026/16th Jyeshtha, 1948 SE

RP 21/2024 in RP 101/2023 in OS 141/2016

PETITIONER

Sajeevan, aged 55, S/o Mulla Narayanan, Thriprayar desom, Nattika Village, Chavakkad Taluk

By Adv. P J Jobi

RESPONDENTS

- 1 P G Nair @ Gopalakrishnan Nair, S/o Ponnoth Gopalakrishnan Nair, 'Krishnakripa', Thriprayar desom, Nattika Village, Chavakkad Taluk
- 2 Sathidevi @ Sathi G Nair, W/o Ponnoth P G Nair @ Gopalakrishnan Nair, 'Krishnakripa', Thriprayar desom, Nattika Village, Chavakkad Taluk
- 3 Sangeetha G Nair @ Sangeetha Nishad, D/o Ponnoth P G Nair @ Gopalakrishnan Nair, 'Krishnakripa', Thriprayar desom, Nattika Village, Chavakkad Taluk
- 4 Trade Link Chits and Financial Enterprises Pvt. Ltd., Kattoor, Village, Mukundapuram Taluk
- 5 Thomas (Died), S/o Thermadam Antony, Kattoor Village, desom, Mukundapuram Taluk Now residing at Thazhekkad Village, desom, Mukundapuram Taluk
- 6 Manoj, aged 59, S/o Kuruvath Sankaran, Padiyam Village, desom, Thrissur Taluk
- 7 Alice, aged 52, W/o Thermadam Late Thomas, Kattoor Village, desom, Mukundapuram Taluk Now residing at Thazhekkad Village, desom, Mukundapuram Taluk

- 8 Asha, aged 32, D/o Thermadam Late Thomas, Kattoor Village, desom, Mukundapuram Taluk Now residing at Thazhekkad Village, desom, Mukundapuram Taluk
- 9 Anna Rose, aged 29, D/o Thermadam Late Thomas, Kattoor Village, desom, Mukundapuram Taluk Now residing at Thazhekkad Village, desom, Mukundapuram Taluk
- 10 Sinta, aged 27, D/o Thermadam Late Thomas, Kattoor Village, desom, Mukundapuram Taluk Now residing at Thazhekkad Village, desom, Mukundapuram Taluk

By Adv. P R Sugasree

This petition coming on this day for hearing before me the court passed the following:-

ORDER

This is an application filed under Order 47 Rule 1 of CPC r/w. Sec. 151 of CPC.

2. The petition averments in brief are as follows. The petitioner is the 2nd defendant in OS 141/2016 and the petitioner filed RP 141/2022 to set aside the exparte decree passed against him. He filed RP. 101/2023 to restore the R.P. 141/2022 which was dismissed for default. In R.P. 101/2023, the fifth respondent Thomas died and a petition was filed to implead his legal heirs as respondents no. 7 to 10. In the above petition, the petitioner paid batta and seventh respondent appeared before the court and eighth respondent was set exparte. Against respondent no.9 and 10, on 24.06.2024, 01.08.2024 and

02.09.2024 the petitioner had paid batta. However, on 05.11.2024 when the case was called, RPIA was dismissed for the reason that steps were not taken against respondent no. 9 and 10. Actually for several times steps were taken against respondent no. 9 and 10. So, the petitioner had serious contentions in the above matter and he prays to review the order dated 05.11.2024, dismissing the restoration petition for default.

3. The application for review is filed on the following grounds:-
The order dated 05.11.2024 is false. As steps were taken and even then petition was dismissed for default. Respondent no. 1, 2, 3 and 7 appeared and steps complete against R4, 5 and 6. Only steps against R9 and 10 were pending. So the petition dismissing RPIA for default on the ground of not taking steps is an error apparent on the face of record. Further, the respondent no. 9 and 10 are appeared before the court in OS 164/2015 and in which IA No. 4/2022 is pending. So without providing an opportunity for serving notice to the counsel of respondent no. 9 and 10, the dismissal of the petition for default, is error apparent on the face of record, and hence the petitioner prays to review the order dated 05.11.2024.

4. Notice was given to the respondents and the respondent no. 1

to 3 filed counter taking the following contentions. According to them, the petition is filed without any bonafides and solely for the purpose of denying the fruits of decree which is passed in OS 141/2016 on 26.06.2019. The order against which review is preferred is dated 05.11.2024. The petitioner had signed the petition on 11.11.2024. However, the petition is filed only on 21.01.2025 and hence barred by limitation. Since the petitioner has not filed any application to condone the delay, the petition is not legally maintainable. The claim of the petitioner that he had paid batta against respondent no. 9 and 10 is false. So the contention of the petitioner that the court ought to have provided opportunity for the petitioner to give notice to the counsel for respondent no. 9 and 10 is not maintainable. The suit is filed on 26.06.2019. Only on 23.11.2022 the petitioner filed R. P. 141/2022 with a delay of 1300 days. He has not preferred any application to condone the delay of 1300 days in filing the petition. Further, he did not pay batta in the application which is filed to set aside the exparte decree. Finally on 25.01.2023 the above petition was dismissed for default and the petitioner preferred RP 141/2022 to restore the above petition. The above RP is filed on 16.10.2023 with a delay of 256 days. IA 1/2023 is

lateron numbered as RPIA 101/2023. However, the above petition is also dismissed on 05.11.2024, for default, as he did not take steps. So the total delay will amount to 2,000 days. Since it is not proper to file a restoration petition, now the petitioner filed the review petition. The review petition is neither maintainable on law nor on facts. Further, petition is filed without a petition to condone the delay and no reason is stated for the delay. So the respondent prays to dismiss the above petition.

5. Based upon the above facts, the following points arose for consideration:

1. Whether there is any error apparent on the face of record of the order dated 05.11.2024?
2. Can the petition be allowed?
3. What is the order?

6. **Point No.1 and 2:-** According to the petitioner, he is the second defendant in OS 141/2016 and an exparte decree was passed against him. He filed RP 141/2022 to set aside the exparte decree which was dismissed for default. Hence he filed RP 101/2023 to restore the same and since the petitioner failed to take steps against respondent no. 9 and

10 who are the legal heirs of deceased respondent no. 5, the above petition was dismissed for default. According to the petitioner, he had taken steps on 24.06.2024, 01.08.2024 and 02.09.2024. Hence there is error apparent on the face of the record of the court. The main contention taken by the contesting respondents is that the suit is decreed on 26.06.2019. The petition to set aside ex parte decree was filed on 23.11.2022 as RP 141/2022 with a delay of 1,300 days. No reason is stated for delay. Further, since the petitioner failed to take steps, the petition was dismissed on 25.01.2023. Thereafter, he filed RP 141/2022 on 16.10.2023 along with a delay of 256 days. The above petition was dismissed on 05.11.2024 since the petitioner failed to take steps. So, there is a delay of 2,000 days and the sole purpose of filing the petition is to deny the plaintiff the fruits of the decree. On perusing the records it is noted that the plaintiff paid batta as stated by him on 24.06.2024, 01.08.2024 and 02.09.2024 against R9 and R10, which were returned stating “address not correct, abroad and not served” respectively. Thereafter, the court again ordered to take steps for substituted service against respondent no. 9 and respondent no. 10 on 29.10.2024 and case was posted to 05.11.2024. On 05.11.2024 no steps

as directed were taken and petition was dismissed. Hence, from the records it is seen that there is no error apparent on the face of record. Hence there is no scope for review of the order dated 05.11.2024 and the petition is dismissed. Point number 1 and 2 answered accordingly.

7. Point No.3:-

In the result, petition dismissed. There is no order as to costs.

(Dictated to the confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open court on this the 6th day of June, 2026)

Sd/-
Rema R K
Principal Sub Judge

APPENDIX :NIL

Id/-
Principal Sub Judge
B/o

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