

IN THE COURT OF THE MUNSIFF OF CHAVAKKAD  
PRESENT:- Dr. Aswathy Asok., Munsiff  
Saturday, the 05<sup>th</sup> day of July, 2025/ 14<sup>th</sup> Ashadha, 1947 SE

I.A.01/2021 in O.S . 1812/2015

Petitioners/Defendants:-

1. Joshy.P. Mathew, aged 45 Yrs, S/o P.M. Mathew, Residing at Kizhakkambalamkara Desom and Village, Kunnathunadu Taluk, Ernakulam District, PIN 683 562.
2. Shijo.P. Mathew, aged 42 Yrs, S/o. P.M.Mathew, Residing at Kizhakkambalamkara Desom and Village, Kunnathunadu Taluk, Ernakulam District, PIN 683 562.
3. Leelama Mathew, Aged 69 Yrs, W/o P.M. Mathew, Residing at Kizhakkambalamkara Desom and Village, Kunnathunadu Taluk, Ernakulam District, PIN 683 562.

(By Adv. S. Sreekumar & Adv. K.D.Vinoj)

Respondent/ Plaintiff:-

BRD Securities Limited , Bethany Complex, Thrissur Road,  
Kunnamkulam Desom & Village, Thalappilly Taluk, Thrissur District.  
Represented by Litigation Clerk Mani.S, Aged 57 years, S/o Sankaran  
Mulamkunnathukavu House, Konchery Road, Killanoor Village,  
Mulamkunnathukavu .P.O, Thrissur Taluk & District,

(By Adv.Geofy George.P)

This petition is coming on 20/06/2025 for hearing, the court passed the following:-

ORDER

Petition filed under Order VI Rule 17 of the Code of Civil Procedure, 1908.

**2. The petition averments, in brief, are as follows:-** The petitioners are the defendants in the present suit, which has been instituted for recovery of money based on a chitty transaction. The defendants had initially engaged an Advocate to represent them before the Court. However, it has come to light that the said Advocate failed to

properly plead the true nature of the transaction in the written statement and did not raise appropriate and necessary defenses therein. This omission was discovered only recently, upon perusal of the case records by the newly engaged counsel, who pointed out the deficiencies and lapses in the pleadings filed earlier. Consequently, the petition seeks to amend the written statement to incorporate the correct and complete factual averments and legal contentions necessary for an effective adjudication of the real issues in controversy. The proposed amendment does not alter the fundamental nature or character of the suit. It is, therefore, submitted that the amendment is essential for a just and proper adjudication of the dispute. Hence, the petition.

**3. The respondent filed counter statement with the following contentions:-**

The petition is not maintainable. The respondent contends that the amendment sought in the present petition is not legally permissible. The proposed amendment, if allowed, would amount to an alteration of the original pleadings of the defendants in a manner that is not permissible under law. Such an amendment would fundamentally change the nature and scope of the defense already set up in the written statement. Therefore, according to the respondent, the petition lacks merit and is liable to be dismissed.

4. From the above rival contentions, the following points arise for consideration:-

1. Are the petitioners entitled to the leave of the court to amend the written statement as sought for?

2. Reliefs and costs?

5. Heard both sides.

**6. Point No.1**:- The present application has been filed by the defendants seeking leave to amend the written statement. According to the petitioners, who are the defendants in the suit, their previous counsel failed to plead the actual nature of the transaction in the written statement and did not properly defend the case by incorporating the necessary averments and legal contentions. The petitioners submit that these lapses came to their notice only upon engagement of a new counsel, who, upon examination of the pleadings, pointed out the omissions and errors in the written statement. Per contra, the respondent has opposed the application, contending that the proposed amendment would materially alter the nature and substance of the original pleadings of the defendants, and therefore, the application is not legally sustainable.

7. The petition is filed to amend the written statement of the petitioners herein under Order VI Rule 17 of the Code of Civil Procedure, 1908. Order. VI R.17 of the Code reads:

*“17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”*

The above provision makes it clear that amendment may be allowed if it is necessary for the purpose of determining the real questions in controversy between the parties. In the present petition, the contention of the petitioners is that their previous counsel had failed to properly plead the true nature of the transaction in the written statement. It is submitted that this lapse came to the knowledge of the petitioners only when their newly engaged counsel examined the pleadings and pointed out various omissions and mistakes. The petitioners, therefore, assert that the proposed amendment is intended solely to rectify such omissions and errors. The suit is one for recovery of money based on a kuri security agreement. As per the averments in the plaint, the defendants had subscribed to a kuri conducted by the plaintiff institution and defaulted in repayment of the amounts due. In their original written statement, the defendants had admitted the kuri transaction between themselves and the plaintiff, though they denied the execution of the *karar* (agreement). However, a perusal of the proposed amendment reveals that the defendants now seek to introduce an entirely new set of facts relating to the transaction, which were not disclosed or even alluded to in the original written statement. In this context, the proposed amendment cannot be considered a mere clarification or correction of earlier omissions or mistakes.

Rather, it amounts to the introduction of new pleas, which alters the nature of the original defense. Allowing such an amendment at this stage would, in my view, cause prejudice to the plaintiff. Moreover, it is relevant to note that the suit was instituted in the year 2015, the written statement was filed in the year 2016, whereas the present petition seeking amendment was filed only in the year 2021, after a considerable and unjustifiable delay. In light of the above, I am of the considered opinion that the proposed amendment does not qualify as a permissible clarification or explanation of the original pleadings, but is an attempt to raise new and inconsistent defenses at a belated stage. Hence, the petition is not legally sustainable and is liable to be dismissed. The point is accordingly found against the petitioners.

**8. Point No.2:-** In view of the finding in point No.1, the petition is to be dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

In the result, the petition is dismissed, no costs.

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court, on this the 5th day of July, 2025.)

kvp  
cg

APPENDIX:- Nil

Sd/-  
Dr. Aswathy Asok  
Munsiff, Chavakkad

Id/-  
Munsiff, Chavakkad.

///True Copy///

Munsiff, Chavakkad

