

**IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIF
SATURDAY 4th JANUARY, 2025 / 14th POUSHA, 1946**

IA No.11/2024 in OS No. 360/2011

Petitioners/ Defendants:

1. Sathyaseelan, S/o Madhavankutty, aged 73 years, Geetha Bhavan, Madathilkunnu, Kilimanoor. PO, Pazhayakunnummel Village.
2. Geetha, D/o Velayudhan, Geetha Bhavan, Madathilkunnu, Kilimanoor. PO, Pazhayakunnummel Village.

By Advocate: Sri. Chirayinkil. A. Babu

Counter Petitioner/ Plaintiff:

Vijayan, D/o Sukumaran, aged 62 years, Pulikkal Veedu,
Kilimanoor, Pazhayakunnummel Village.

By Advocates: Sri. G. Suseelan

This petition filed by Adv. Chirayinkil. A. Babu to accept the written statement having been finally heard on 04.01.2025 and the court on same day passed the following:

ORDER

This is a petition filed by the Additional 2nd defendant in the suit to accept the written statement and the counterclaim. Heard both sides in detail.

Earlier a petition IA.09/2024 was filed by the same petitioner to accept the written statement and the counterclaim which was later not pressed by the petitioner contending that some errors crept inside the same. The plaintiff filed an objection to that petition and during hearing same contentions were raised.

The defendants contended that the written statement and counterclaim is filed belatedly and the petitioner has not adduced any sufficient reason for the delay in filing the written statement and counterclaim. The Additional 2nd

defendant entered appearance before the court on 04.11.2019, but she did not file the written statement for a long time. There is wilful latches and negligence from the side of the Additional 2nd defendant and the counterclaim is barred by law of limitation.

Further during the course of hearing the learned counsel the plaintiff submitted that Vide Order dated 10.12.2019, the Additional 2nd defendant was set exparte. He placed reliance on the decision of the **Hon'ble High Court of Kerala in Maradijam Vs Meladanomanamna 2024 (5) KHC 359**, where in the Hon'ble Court held as follows-

“ The majority view in **Ashok Kumar Kalra V. Surendra Agnihotri & Ors 2019 (5) KHC 735** has enumerated the factors to be looked in to while accepting a counterclaim and held that it should not be after framing of issues. The minority view in Ashok Kumar Kalra's case though opined that the counterclaim could be entertained in exceptional circumstances till the stage of commencement of recording evidence on behalf of plaintiff, also expressed that propriety requires that such discretion of the court should ordinarily be exercised to allow the filing of counterclaim till the framing of issues”.

Perusing the facts of this case, it can be seen that in the instant case, the defendant who filed this petition to accept the written statement and counterclaim has not filed any written statement before. Hence the question of delaying the counterclaim after filing of the counterclaim is does not arise.

Additionally, the petitioner herein was already set exparte vide Order dated 10.12.2019 and the petitioner has not taken any steps to set aside that order. The written statement and counterclaim cannot be accepted without setting aside the order whereby the defendant was set exparte. Hence this court is of the view that this court be allowed at this juncture and the written statement and counterclaim cannot be accepted without setting aside the order setting the Additional 2nd defendant exparte. Hence this petition is dismissed with cost.

Pronounced by me in Open Court on this the 4th day of January, 2025.

Sd/-
SWATHI.R.KRISHNAN
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

//True Copy//

Typed by: Lasitha
Compared by: Sheena.K

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