

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A.NO.1 IN CIVIL APPEAL NO(s). 1438-1439 OF 2003

BEFORE THE REGISTRAR S.G. SHAH

KOTTAYAM MUNICIPALITY

Appellant (s)

VERSUS

N. SIVASANKARA KURUP & ANR.

Respondent(s)

(With appln(s) for substituted service and office report))

WITH

SLP(C) NO. 1850-1851 of 2008

(With office report)

SLP(C) NO. 19057 of 2003

(With office report)

SLP(C) NO. 19403 of 2004

(With office report)

SLP(C) NO. 19404-19405 of 2004

(With office report)

Date: 03/10/2012 These Appeals were called on for hearing today.

For Appellant(s)

Ms Neelam Saini, Adv.
Mr. M.P. Vinod, Adv.
Mr. Romy Chacko, Adv.

For Respondent(s)

Mr. Subramonium Prasad, Adv.
Mr. Romy Chacko, Adv.
Mr. P.V. Dinesh, Adv.
Mr. Radha Shyam Jena, Adv.
M/S. Lawyer'S Knit & Co
Mr K.K.Sudheesh, Adv.
Mr Jogy Scaria, Adv.

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UPON hearing counsel the Court made the following
O R D E R

There is inordinate delay in getting the matter ready for invalid reasons for almost nine years, therefore, I could not restrain to disclose the developments in the case while dealing with an application for

substituted service which is filed only on 19.7.2012 i.e., just one day before the matter was last listed before the Hon'ble Judge in Chambers for non-prosecution in view of non-action on part of the appellant since long.

The record shows that original SLP was filed in the month of May, 2000 and permission to file SLP was granted by an order dated 17.7.2000 with an order to issue notice. Matter was thereafter listed on several occasions before the Court and adjourned from time to time and on all the occasions it was adjourned as requested by the ld. Counsel for the appellant. By an order dated 17.2.2003, Court has granted leave in SLP with a stay against payment of enhanced amount of compensation with further direction as under

" __Printing dispensed with. The appeals shall be heard on the SLP paper books. Parties may file additional documents within 10 weeks. Original records need not be called for."

It seems that thereafter Civil Appeal was listed for hearing only on 15.7.2008 when it has been disclosed by the ld. Counsel for the appellant that respondent has died and requested for two weeks to file necessary application for

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bringing on record the legal heirs of the respondent. Thereafter, though appellant has requested for two weeks' time to file proper application, no such application was filed within two weeks, but an application to bring legal heirs of deceased respondent was filed only on 2.4.2009 with an application for condonation of delay in joining legal heirs. Even today such application for condonation of delay does not disclose the actual number of days for which delay is to be condoned. Moreover, such application is not in accordance with law and rules inasmuch as it is not supported with the Death Certificate of the respondent. However, it is contended in such application that there is delay in filing such application because legal heirs of the deceased respondent were not residing at the address where deceased respondent was residing and appellant could not collect the information and that after detailed inquiry, the appellant got the details of the legal representatives of the deceased respondent as disclosed in such application with their new address. If it is so, then certainly appellant would be able to confirm service at such address. However, surprisingly since 2.4.2009, matter has been repeatedly dragged for confirming service upon legal representatives of deceased respondent on different dates i.e., on 21.11.2008 before the Registrar's Court, on 21.1.2009 before the Hon'ble Chamber Judge, again on 25.1.2011, 23.2.2011, 26.4.2011 before the Registrar's Court and again on 11.11.2011 before the Hon'ble Chamber Judge.

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By an order dated 11.11.2011, Hon'ble Judge in Chambers was pleased to grant four weeks' time to file an application for substituted service in respect of legal representatives of deceased respondent No.1. Surprisingly, instead of filing an application within four weeks i.e., on or before 11.12.2011, the present application is filed only on 19.7.2012 i.e., after registry has prepared an office report dated 13.1.2012 for listing the matter before the Hon'ble Judge in Chambers for appropriate orders since time granted by the Hon'ble Chamber Judge on 11.11.2011 was expired.

Surprisingly, in such applications, a statement has been made that Hon'ble Court has permitted to file an application for substituted service by an order dated 11.11.2011, though there cannot be any necessity of a permission to apply for substituted service. It can be requested, based upon the circumstances of each case, for which permission of the Court is never required.

If we peruse an application for substituted service by publication, which is filed on 19.7.2012, practically it does not disclose any proper reason or ground for publication of notice, as prayed for. The order dated 20.7.2012 by the Hon'ble Chamber Judge also categorically states that application, if in order, may be accepted with a condition to deposit a cost of Rs.1000/-. The appellant has already paid such cost of Rs.1000/- on 31.7.2012. Therefore, now the only issue remaining is regarding the prayers

in an application for substituted service by publication.

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Registry has to clarify in writing to the undersigned that why such application has not been taken care of from 19.7.2012 till date and why the same has not been placed before the ld. Registrar(Judl.) in Chambers in view of Circular that such application can be dealt with by the concerned Registrar (Judl.) in Chamber.

Such explanation shall be forwarded through the concerned ld. Registrar(Judl.) without fail within a week.

List again on 10.10.2012.

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|(S.G.SHAH)
|REGISTRAR

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