

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.S. DIAS

THURSDAY, THE 23RD DAY OF JUNE 2022 / 2ND ASHADHA, 1944

OP(C) NO. 340 OF 2019

AGAINST THE ORDER IN IA.3123/2018 IN OS 125/2018 OF II

ADDITIONAL SUB COURT, ERNAKULAM

PETITIONER/S:

1. ZERITA ASHLEN ROCHA, AGED 32 YEARS, D/O. ASHLEN ANTONY ROCHA, RESIDING AT 10/152, 4E, INFRA VANTAGE, CSEZ, CHITTETHUKARA, PINCODE - 682037, KANAYANNUR TALUK, ERNAKULAM

2. STELLA MARIE ASHLEN, AGED 55 YEARS, W/O. ASHLEN ANTONY ROCHA, RESIDING AT HOUSE NO.19/89 C2, FLAT NO.1C TULASI PLUS SQUARE, PUTHUSSERY MUGAL, PUTHIYA ROAD, KANGARAPADY, PINCODE - 682 021, KANAYANNUR TALUK, ERNAKULAM DISTRICT

BY ADVS.
SRI.K.M.ANEESH
SRI.K.SANTHOSH KUMAR (KALIYANAM)
SRI.ADARSH KUMAR
SRI.BIJU VARGHESE ABRAHAM
SRI.DILEEP CHANDRAN
SRI.SHASHANK DEVAN

RESPONDENT/S:

ANN MARY VARGHESE, AGED 26 YEARS, W/O. THOMAS FRANCIS VADKKEKEL, ERINJERI HOUSE, SUNRISE, MARTHABHAVAN ROAD, KIZHAKKUMPATTUKARA, PINCODE - 62030, KANAYANNUR TALUK, ERNAKULAM

BY ADVS.
VARSHA SAHAJAN
T.N.JAYADEVAN
ZAKEER HUSSAIN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 23.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The original petition is filed to set aside the order in I.A.No.3123/2018 in O.S.No.125/2018 (Ext.P3) of the Court of the 2nd Additional Subordinate Judge, Ernakulam.

2. The petitioners were the defendants in the above suit, filed by the respondent, seeking a decree for realisation of money. The petitioners were set ex-parte. They had filed I.A.No.3123/2018 to set aside the ex-parte order. The Court below, by Ext.P2 order, set aside the order on condition that the petitioners file their written statement on or before 17.12.2018. Even though, the petitioners had filed the written statement on the said date there was a formal defect in the same. Therefore, the Court below by the impugned Ext.P3 order, dismissed I.A.No.3123/2018 and confirmed the ex-parte order. Ext.P3 is erroneous. Hence, the original petition.

3. Heard; Sri.Biju Varghese Abraham, the learned

counsel appearing for the petitioners and Sri.Zakeer Hussain, the learned counsel appearing for the respondent.

4. The Court below had by Ext.P2 order set aside the ex-parte order on condition that the petitioners file their written statement on or before 17.12.2018. It is undisputed that the petitioners had filed their written statement; but there was some formal defect in the same. The Court below even after noticing that the written statement was filed, rejected I.A.No.3123/2018 holding that no written statement was filed. Consequentially, Ext.P3 order was passed, confirming the ex-parte order.

5. On an appreciation of the pleadings and materials on record, I find that the course adopted by the Court below to be hyper technical and unwarranted especially when the petitioners had filed the written statement within the prescribed time period permitted

by the Court below. The Court below ought to have granted the petitioners an opportunity to cure defect in the written statement, instead of taking the drastic step of rejecting the application. It is trite, Courts should make every endeavour to dispose of a case on merits rather than on default.

6. In the above background, I am inclined to exercise the supervisory powers of this Court under Article 227 of the Constitution of India and allow the original petition in the following manner:

- (i) Ext.P3 order is set aside.
- (ii) The petitioners are permitted to cure the defects in the written statement within two weeks from the date of receipt of a certified copy of this judgment, and represent the written statement before the Court below.
- (iii) The Court below shall proceed with the trial of

the suit and dispose of the same, in accordance with law, as expeditiously as possible and at any rate on or before 31.03.2023.

sd/-

C.S.DIAS, JUDGE

rkc/23.06.22

APPENDIX OF OP(C) 340/2019

PETITIONERS' EXHIBITS

EXHIBIT P1 A TRUE COPY OF THE PLAINT IN
O.S.NO.125/2018 ON THE FILE OF HON'BLE
IIND ADDITIONAL SUB COURT, ERNAKULAM

EXHIBIT P2 A TRUE COPY OF THE ORDER DATED
15.12.2018 IN I.A. NO.3123/2018 IN
O.S.NO.125/2018

EXHIBIT P3 A TRUE COPY OF THE ORDER DATED
19.12.2018 IN I.A. NO.3123/2018 IN
O.S.NO.125/2018