

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

OP(C).No. 947 of 2015

O.S.NO.15/2009 OF SUB COURT, THIRUVALLA.

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PETITIONER:

**JOMON JOHN, S/O. LATE P.V.JOHN,
PUTHENPARAMBIL HOUSE,
SEA VIEW WARD, ALAPPUZHA TOWN,
AMBALAPPUZHA TALUK.**

**BY ADVS.SRI.PIRAPPANCODE V.S.SUDHIR
SRI.JELSON J.EDAMPADAM**

RESPONDENT(S):

- 1. TRAVANCORE CLUB, THIRUVALLA,
REPRESENTED BY ITS PRESIDENT
AND SECRETARY, THIRUVALLA-689 101.**
- 2. K.G.PILLAI, PRESIDENT,
TRAVANCORE CLUB, THIRUVALLA,
RESIDING AT REGHU MANDIRAM,
PANCHANADU P.O., CHENGANNOOR-689 506.**
- 3. JACOB THOMAS, SECRETARY,
TRAVANCORE CLUB, THIRUVALLA, RESIDING AT
THEKKEPARAMBIL PANIKKARU VEETIL,
PERINGARA-689 108.**
- 4. GEORGE JOHN,
FORMER PRESIDENT OF TRAVANCORE CLUB,
THIRUVALLA, RESIDING AT MARUTHIKKUNNU,
KATTOOKARA, THIRUVALLA-689 101.**
- 5. SAJI M.MATHEW,
FORMER EXECUTIVE COMMITTEE MEMBER,
TRAVANCORE CLUB, THIRUVALLA,
RESIDING AT MANNATH HOUSE, ROSE JUNCTION,
THIRUVALLA-689 101.**

**R1 BY ADVS. SRI.JOSEPH GEORGE
SRI.N.P.PRAJEESH**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 : TRUE COPY OF THE PLAINT IN OS 15/09 FILED BY THE PETITIONER BEFORE THE SUB COURT, THIRUVALLA.
- P2 : TRUE COPY OF THE WRITTEN STATEMENT FILED JOINTLY BY THE 1ST AND 3RD DEFENDANT IN OS 15/2009.
- P3 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 4TH DEFENDANT IN OS 15/2009.
- P4 : TRUE COPY OF THE AFFIDAVIT AND THE INTERIM APPLICATION SEEKING PERMISSION TO WITHDRAW THE SUIT WITH LIBERTY TO INSTITUTE A FRESH SUIT IN RESPECT OF THE SUBJECT MATTER OF THE SUIT, VIZ. OS 15/2009.
- P5 : TRUE COPY OF THE ORDER DATED 30.9.2009 IN IA NO.1217/09 IN OS 15/2009.
- P6 : TRUE COPY OF THE JUDGMENT DATED 30.9.2009 OF THE SUB JUDGE, THIRUVALLA IN OS NO.15/2009.
- P7 : TRUE COPY OF THE JUDGMENT DATED 13.8.2013 OF THIS HON'BLE COURT IN WPC NO.7202/2010.
- P8 : TRUE COPY OF THE JUDGMENT DATED 7.3.2014 OF THIS HON'BLE COURT IN REVIEW PETITION NO.56/2013 IN WPC NO.7202/2010.
- P9 : TRUE COPY OF THE INTERIM APPLICATION NO.448/2014 FILED BY THE PETITIONER IN OS NO.15/2009.
- P10 : TRUE COPY OF THE UN-NUMBERED INTERIM APPLICATION FILED BY THE PETITIONER IN OS NO.15/2009.
- P11 : TRUE COPY OF THE COMMON ORDER DATED 13.1.2015 OF THE LEARNED SUB COURT, THIRUVALLA IN EXTS.P9 AND P10 APPLICATIONS.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

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B.KEMAL PASHA, J.

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O.P.(C).No.947 of 2015

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Dated this the 30th day of June, 2015

J U D G M E N T

An application was filed before the court below in the suit under Order 23 Rule 1 Sub Rule (3) for permission to withdraw from the suit with liberty to file a fresh suit. The court below, through Exhibit P5 order dismissed the suit as withdrawn with out liberty to file a fresh suit. The said order was challenged before this Court. Initially, this Court through Exhibit P7, declined the exercise of jurisdiction under Article 227 of the Constitution of India and dismissed the writ petition. Thereafter, a review petition was filed, on which this Court has passed Exhibit P8 judgment. Vide Exhibit P8

judgment dated 07.03.2014, this Court has reviewed Exhibit P7 judgment and recalled the order dismissing the writ petition. The writ petition was allowed by interfering with Exhibit P5 order, which permitted the petitioner to withdraw the suit. Exhibit P5 stands quashed. Exhibit P4 I.A.No.1217 of 2009 of the court below was ordered to be dismissed through Exhibit P8 judgment .

2. In view of Exhibit P8 judgment, there is an automatic restoration of the suit as such. Any further application or further order from the court below is not required in the matter. When Exhibit P4 application on the basis of which Exhibit 5 order was passed was dismissed and when Exhibit P5 order was quashed, the suit stands restored. It seems that the petitioner has unnecessarily filed Exhibits P9 and P10 applications before the court below for condoning the delay and for getting the suit restored. The court below has passed Exhibit P11 order, thereby dismissing Exhibits P9 and P10 I.As. Exhibit P11 order is under challenge.

3. Even without Exhibits P9 and P10, it seems that the suit is alive as this Court has restored the suit. Through Exhibit P8 judgment, when Exhibit P4 was dismissed and Exhibit P5 order was quashed, automatically the suit stands restored. The court below shall proceed with the suit.

This Original Petition (Civil) is allowed accordingly.

Sd/-

B.KEMAL PASHA
JUDGE