

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYASHTA, 1937

OP(C).No. 1341 of 2015 (O)

I.A. NO.1990/2014 IN O.S. NO.504/2009 OF PRINCIPAL SUB COURT, KOTTAYAM.

.....

PETITIONER/4TH DEFENDANT:

**SINDHU K.N., AGED 42 YEARS,
D/O. NARAYANAN NAIR, MANIMANDIRAM HOUSE,
BUDHA JUNCTION, KOTTARAKAVU VILLAGE,
MAVELIKKARA.**

BY ADV. SRI.RAJEEV V.KURUP.

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 3:

- 1. P.H. NAZZAR, S/O. HASSAN RAWTHER,
PARAYIL HOUSE, VAZHAOR,
KOTTAYAM-686 504.**
- 2. RAJU MALLIYATH, S/O. NARAYANAN NAIR,
MALLIYATH KALAMANDIRAM,
NEAR SREE VALLABHA TEMPLE,
KAVUMBHAGOM, THIRUVALLA-686 519.**
- 3. REJI KUMAR N., S/O. NARAYANAN NAIR,
MADHAVAMANDIRAM HOUSE, PERUNNA,
CHANGANACHERRY, KOTTAYAM-686 101.**
- 4. RAMESH KUMAR N., S/O. NARAYANAN NAIR,
KOZHINOOR HOUSE, KUTTOOR KARA,
THIRUVALLA-686 106.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 12-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP(C).No. 1341 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1- COPY OF THE ORDER DATED 27-09-2010 IN CMA.74/2000 OF THE DISTRICT COURT, KOTTAYAM.

EXHIBIT P2- COPY OF THE IA. 1990/2014 IN OS.504/2009.

EXHIBIT P3- COPY OF THE ORDER DATED 27-03-2015 IN IA. 2990/2014 IN OS. 504/2009 OF THE PRL. SUB COURT KOTTAYAM.

RESPONDENTS' EXHIBITS:

NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B.KEMAL PASHA, J.

.....
O.P.(C) No. 1341 of 2015
.....

Dated this the 12th day of June, 2015

J U D G M E N T

The petitioner is the 4th defendant in O.S.No.504 of 2009 of the Principal Subordinate Judge's Court, Kottayam. The said suit is one for specific performance of a contract. In the plaint, relief for return of advance money was not sought for. Subsequently, for incorporating such an amendment, IA 1990/2014 was filed. It is the admitted case of the parties that the agreement in question was executed by defendants 1 to 3 alone in favour of the plaintiff. The 4th defendant, who is the sole sister, was not a party to the agreement. When the amendment was sought for, a decree

for such a relief was also sought for against all the defendants including the petitioner. The petitioner has serious heart burn in the matter as the petitioner has got a case that since she was not a party to the agreement the said relief sought for by way of amendment as against the petitioner is clearly time barred, and therefore, the court below ought not have allowed the said amendment as against the petitioner. It seems that the amendment has been carried out and the suit is being proceeded with.

2. Of course, in such a case, the petitioner can still take up a contention that as the relief as sought for now through the present amendment is hopelessly barred by limitation, she should be permitted to file an Additional written statement to that effect. It seems that the court below has not considered the counter filed by the petitioner herein as against the application seeking amendment. Presently, the amendment as it stands now holds good as against defendants 1 to 3, and not against the petitioner herein.

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-: 3 :-

With the said observations, this Original Petition is disposed of.

ul/-

Sd/- B.KEMAL PASHA, JUDGE

[True copy]

P.S. to Judge