

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

OP(C).No. 1763 of 2015 (O)

**EA.263/14 & EA.264/14 & EP.219/12 & EA.244/15 IN OS.228/2012 OF SUB COURT,
ERNAKULAM, DATED 7/8/2014**

PETITIONER(S)/JUDGMENT DEBTORS/RESPONDENTS:

1. DR.JOHN JOSEPH, AGED 66 YEARS,
S/O.JOSEPH, VILAVINAL ASHIRVAD, DOOR NO.32/2611,
NATIOAL HIGHWAY, PALARIVATTOM, KOCHI 682025.
2. JOJI JOHN, AGED 40 YEARS,
S/O.DR. JOHN JOSEPH, VILAVINAL ASHIRVAD,
DOOR NO.32/2611, NATIONAL HIGHWAY, PALARIVATTOM,
KOCHI 682025.
3. SUSY JOHN, AGED 62 YEARS,
W/O.DR. JOHN JOSEPH, VILAVINAL ASHIRVAD,
DOOR NO.32/2611, NATIONAL HIGHWAY, PALARIVATTOM,
KOCHI 682025.
4. ABEY JOJI, AGED 32 YEARS,
W/O.JOJI JOHN, VILAVINAL ASHIRVAD, DOOR NO.32/2611,
NATIONAL HIGHWAY, PALARIVATTOM, KOCHI 682025.
5. GIE PLANTATIONS PVT. LTD.
NATIONAL HIGHWAY, PALARIVATTOM, VILAVINAL ASHIRVAD,
DOOR NO.32/2611, REP.BY THE MANAGING PARTNER DR.JOHN JOSEPH.

**BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA**

RESPONDENT(S)/DECREE HOLDER/PLANTIFF:

**BIJU MATHEW ABRAHAM,
S/O.MATHEW ABRAHAM, N. PUTHENPARAMBIL,
KOZHENCHERRY EAST PO, PATHANAMTHITTA DISTRICT.**

**BY ADVS. SRI.JOHN MATHEW (THEREZHATH)
SRI.JOBIN JOHN**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25-09-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 1763 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: THE TRUE COPY OF THE EXECUTION PETITION EP.219/2012 OF SUB COURT, ERNAKULAM**
- P2: THE TRUE COPY OF THE ORDER PASSED IN EA.NO.263/2014 DATED 07.08.2014**
- P3: THE TRUE COPY OF THE ORDER PASSED IN EA.NO.264/2014 DATED 07.08.2014**
- P4: THE TRUE COPY OF THE APPLICATION**
- P5: THE TRUE COPY OF THE ORDER PASSED IN EXHIBIT P4 APPLICATION**

RESPONDENT(S)' EXHIBITS

- R1(A): TRUE COPY OF ORDER DATED 10/3/14 IN EA.610/2012 IN EP.219/12 IN OS.228/12 OF SUB COURT, ERNAKULAM.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. ABRAHAM MATHEW, J.

O.P.(C). No. 1763 of 2015

Dated this the 25th day of September, 2015

J U D G M E N T

Petitioners are the JDs in EP.No.219 of 2012 in O.S.228 of 2012 on the file of Sub Court, Ernakulam. The EP was dismissed on 14.08.2013. Immediately thereafter the decree holder filed EA.No.610 of 2013 to restore the execution petition. By R1(a) order the executing court rejected it on the ground that the Advocate who filed it had no vakkalath for the decree holder. Later, the decree holder filed 264 of 2014 to restore the execution petition. That was allowed on payment of costs. The petitioners/JDs filed EA.No.44 of 2015 to recall that order. By Ext.P5 order the learned Sub Judge dismissed it. Its correctness is challenged in this O.P.

2. Heard the learned counsel on both sides.

3. The petitioners wanted the executing court to recall its order restoring the execution petition on the ground that it was time barred and Section 5 of the Limitation Act was not applicable. But on the other hand, the learned counsel Sri.John Mathew submits that the

application was filed under Order 47 Rule 1 C.P.C and not under any provision of Order 21 C.P.C.

4. I have perused all the relevant records. The order in EA.No.263 of 2014 filed to restore the execution petition was allowed because it was unopposed by the present petitioners. So it is not at all proper for this court now to examine whether the application which was filed beyond the prescribed period of limitation was maintainable. In any view of the matter the order is not a nullity even if it is considered an illegal order. So I am not inclined to interfere with the impugned order.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge