

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP(C).No. 1039 of 2010 (O)

AGAINST THE ORDER IN IA 2162/08 IN OS 137/2004 OF MUNSIFF
COURT, THALASSERY DATED 17.10.2008

PETITIONER(S):

P.CLEMENT,S/O.ROCKY, RESIDING AT
PANAKKAL HOUSE, POOVALAPPU THERU, P.O.TEMPLE GATE
TELLICHERRY, KANNUR DISTRICT
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
JAMES A.F., AGED 37 YEARS
S/O.A.T.FRANCIS, RESIDING AT ADAKKAMARAKKUTTATHIL HOUSE
KOTTAKKUNNU, S. BATHERY, WYNAD.

BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL

RESPONDENT(S):

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1. M/S.MAHINDRA & MAHINDRA FINANCIAL
SERVICE LTD, 37/3453, 3RD FLOOR
KALYANI TOWERS, DESHABHIMANI JUNCTION, N.H.KALOOR
KOCHI-17
 2. JOINT REGIONAL TRANSPORT OFFICER,
OFFICE OF THE JOINT REGIONAL TRANSPORT OFFICE
TELLICHERRY-670101
 3. FAIZAL, S/O.AHAMMED KOYA HAZEEB,
CHERUVANNUR, P.O.KOLTHARA-673655

R,R3 BY ADV. SRI.R.SURENDRAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.NO.137/2004.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE FIRST RESPONDENT.

EXT.P3: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE SECOND RESPONDENT.

EXT.P4: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER SEEKING THE LEAVE OF THE COURT TO DELIVER INTERROGATORIES TO THE FIRST RESPONDENT.

EXT.P5: TRUE COPY OF THE AFFIDAVIT FILED BY THE FIRST RESPONDENT.

EXT.P6: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR IMPEADING THE ADDITIONAL THIRD DEFENDANT.

EXT.P7: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR AMENDING THE PLAINT.

EXT.P8: TRUE COPY OF THE ORDER PASSED BY THE MUNSIFF COURT, THALASSERY IN I.A.NO.2162/2008 IN O.S.NO.137/2004.

EXT.P9: TRUE COPY OF THE JUDGMENT IN O.S.NO.137/2004.

EXT.P10: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER AS I.A.NO.130/2009 TO RESTORE THE SUIT.

RESPONDENTS' DOCUMENTS:

NIL

//TRUE COPY//

P.A. TO JUDGE

K.T.SANKARAN, J.

O.P.(C) No.1039 of 2010

Dated this the 23rd day of March, 2015

JUDGMENT

The petitioner is the plaintiff in O.S.No.137 of 2004 on the file of the court of the Munsiff of Thalassery. The suit was filed originally against respondents 1 and 2 for the following reliefs:

- “(a) permanent prohibitory injunction restraining the first defendant from transferring the vehicle No.KL13G/4409 which was repossessed by the first defendant from the plaintiff.
- (b) Permanent prohibitory injunction restraining the 2nd defendant from issuing the Duplicate Registration Certificate in respect of Vehicle bearing No.KL13G/4409 to the first defendant.
- (c) Mandatory injunction directing the first defendant to terminate the Hypothecation in respect of the vehicle bearing No.KL13G/4409 of which the plaintiff is the R.C. Owner.
- (d) Directing the 1st defendant to give Form No.35 as

contemplated under Section 61 of the Central Motor Vehicles Rules to the second defendant.

- (e) Directing the defendants to pay cost of this suit to the plaintiff.
- (f) Such other relief as this Hon'ble Court deems fit and proper in the circumstances of the case.”

2. The plaintiff contended that he took a loan from the first defendant on 15.4.2003 for the purchase of a Maruti van. Instalments fell due and a notice was issued by the financier on 22.9.2003. The financier re-possessed the vehicle on 25.9.2003. The financier applied for changing the registration of the vehicle in their name. At that stage, the suit was filed.

3. The first defendant/financier filed a written statement stating that the vehicle was sold to a third person for valid consideration even prior to the filing of the suit and the vehicle was not in the possession of the financier. It was

contended by the first defendant that the prayer in the suit has become infructuous.

4. The plaintiff filed an application to permit him to serve interrogatories on the first defendant as to when the vehicle was sold, whether there is any document evidencing sale, what is the name and address of the purchaser and for what consideration the vehicle was sold. The first defendant answered the interrogatories. The affidavit accompanying the application to serve interrogatories was dated 29.9.2004.

5. Thereafter, the plaintiff filed an application to implead the purchaser of the vehicle as the third defendant. The affidavit in that regard was filed in June, 2005. Accordingly, the third defendant was impleaded.

6. Later, the plaintiff filed an application to amend the plaint incorporating a relief for damages of ₹90,000/- from the first defendant. The affidavit accompanying the application for the amendment of the plaint to add a prayer for declaration that the sale of the vehicle in favour of the third supplemental defendant is null and void and for directing the first defendant to pay a sum of ₹90,000/- to the plaintiff is dated 14th October, 2008. The court below dismissed the application for amendment (I.A.No.2162 of 2008) by the order dated 17th October, 2008, which is under challenge in this Original Petition. The Original Petition is seen filed on 7th December, 2010. The learned counsel for the petitioner submitted that after the dismissal of the application for amendment of plaint, the suit was dismissed for default on 18.10.2008 and it was restored to file only on 24.7.2010.

7. As rightly held by the court below, the application for amendment is highly belated. The suit itself was filed after the sale of the vehicle was effected. The cause of action for adding the prayer was not one which arose after filing the suit. The plaintiff was aware of the sale in 2004 itself. In 2005, he filed an application to implead the purchaser of the vehicle as additional third defendant. Even at that time, he did not think it fit to amend the plaint incorporating reliefs mentioned above. He filed the application for amendment of plaint even after expiry of three years thereafter. The claim is definitely barred by limitation. The application for amendment was filed after the suit was listed for trial. Even thereafter, the plaintiff did not prosecute the suit and the suit was dismissed for default. Even after the suit was restored to file, the Original Petition was filed after four months, when the suit was again listed for trial.

8. The learned counsel for the petitioner relied on the decision of the Supreme Court in **Sampath Kumar v. Ayyakkannu and another** [(2002)7 Supreme Court Cases 559] and contended that the Supreme Court held that delay by itself is not a ground for dismissing the application for amendment. It is submitted that in that case there was a delay of 11 years. It is to be noted that in Sampath Kumar's case, it was a suit for injunction in which the plaintiff alleged that after the institution of the suit, the defendant forcibly dispossessed the plaintiff and he filed an application for amendment incorporating a relief of declaration of title and for possession. It was in that context, the Supreme Court held that to avoid multiplicity of proceedings, it was necessary to allow the amendment and that delay by itself would not be a ground for dismissing the application. In the present case, the facts would not justify the allowing of the application for amendment.

9. The order passed by the court below is legal and proper. No grounds are made out for interference.

The Original Petition is accordingly dismissed.

**K.T.SANKARAN
JUDGE**

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