

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

OP(C).No. 2997 of 2014 (O)

(I.A.NO.1318/2014 IN O.S.NO.178/2008 OF SUB COURT, ALAPPUZHA)

PETITIONER/DEFENDANT/COUNTER CLAIM PLAINTIFF :

SREEKUMARI, AGED 47 YEARS,
W/O.SASIKUMAR, CHEMMOTH HOUSE,
KARALAKOM WARD, THATHAMPALLY P.O,
ALAPPUZHA DISTRICT

BY ADV. SRI.N.ASHOK KUMAR

RESPONDENT/PLAINTIFF/COUNTER CLAIM DEFENDANT :

SUNIL S.RAO, AGED 42 YEARS,
S/O.SIVA RAO, SARASWATHI NIVAS, M.O WARD,
ALAPPUZHA DISTRICT .

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).No. 2997 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF WRITTEN STATEMENT TO THE COUNTER CLAIM
 DATED 12-11-2014 IN O.S 178/2008.
- EXHIBIT P2 TRUE COPY OF PETITION DATED 12-11-2014 FOR RECEIVING WRITTEN
 STATEMENT IN I.A NO 1318/2014 IN O.S NO 178/2008
- EXHIBIT P3 TRUE COPY OF ORDER IN I.A NO 1318/2014 IN O.S NO 178/2008 OF SUB
 COURT,ALAPPUZHA DATED 25/11/2014

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.BHAVADASAN, J.

Original Petition (Civil) No.2997 OF 2014

Dated this the 12th day of January, 2015.

J U D G M E N T

The only grievance voiced by the learned counsel for the petitioner is that to the written statement, counter claim has been filed only after six years and hence the delay ought not to have been condoned by the court below by awarding cost to the petitioner.

2. The petitioner before this Court was the defendant in the suit. She laid a counter claim in the suit. Obviously, the plaintiff had to file written statement to the counter claim. He did not do so for a long time. According to the petitioner, after the commencement of trial, the respondent moved an application to receive the written statement to the counter claim.

3. The lower court though agreed with the petitioner that there is considerable delay in filing the written statement, found

that since no prejudice is caused to the petitioner and also since any loss caused to the petitioner can be compensated by awarding of cost, accepted the written statement by awarding a sum of Rs.1,500/- as cost.

4. Learned counsel appearing for the petitioner pointed out that there was no justification for the court below to condone the inordinate delay and to receive the written statement to the counter claim especially after the commencement of trial.

5. The plaintiff in the suit had given a reason as to why the delay had occurred and that was found acceptable by the court below. Moreover no prejudice is seen caused to the petitioner by the court below directing receipt of written statement to the counter claim. More so, the court below has rightly noticed that any injury caused to the petitioner can be compensated by awarding of cost. It is well settled that technicalities shall not stand in the way of doing justice. The court below felt that it is only appropriate that delay be condoned and written statement be accepted.

There is no illegality, impropriety or irregularity in the

finding entered into by the court below. If that be so, no interference is called for.

This original petition is dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp