

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

OP(C).No. 3077 of 2014 (O)

**I.A.NO.3878/2014 IN O.S.NO.371/2011 OF SUBORDINATE JUDGE'S COURT,
IRINJALAKUDA**

PETITIONER(S)/DEFENDANT NO.1:

**JOSE, S/O.DOMINI, AGED 41 YEARS,
PUTHANKODI, CHALAKUDY DESOM, EAST CHALAKUDY VILLAGE,
MUKUNDAPURAM TALUK, PIN:680 307.**

**BY ADVS.SRI.MATHEW SKARIA
SRI.K.J.JOSEMON**

RESPONDENT(S)/PLAINTIFF AND DEFENDANTS 2 TO 4 :

- 1. JOHNSON, AGED 57 YEARS,
S/O.JOSEPH, KOLENCHERI, POTTA DESOM,
PERAMBRA VILLAGE, MUKUNDAPURAM TALUK, PIN:680 307.**
- 2. JOSHI, AGED 43 YEARS,
S/O.DOMINI, PUTHANKODI, CHALAKUDY DESOM,
EAST CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK, PIN:680 307.**
- 3. JOSE, AGED ABOUT 47 YEARS,
S/O.PAULOSE, THARAKAN, CHALAKUDY DESOM,
WEST CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK, PIN:680 307.**
- 4. THE MANAGER,
THE FEDERAL BANK LTD., CHALAKUDY BRANCH,
CHALAKUDY, PIN:680 307.**

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)

**R4 BY ADVS. SRI.A.ANTONY
SMT.LEELAMMA ANTONY**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

OP(C).No. 3077 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: PHOTOCOPY OF THE PLAINT IN O.S.NO.371/2011 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, IRINJALAKUDA.**
- EXHIBIT P2: PHOTOCOPY OF THE WRITTEN STATEMENT IN O.S NO.371/2011 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, IRINJALAKUDA.**
- EXHIBIT P3: PHOTOCOPY OF I.A.NO.3878/2014 IN O.S.NO.371/2011 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, IRINJALAKUDA.**
- EXHIBIT P4: PHOTOCOPY OF THE OBJECTIONS IN I.A.NO.3878/2014 IN O.S.NO.371/2011 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, IRINJALAKUDA.**
- EXHIBIT P5: PHOTOCOPY OF THE ORDER DATED 15.12.2014 IN I.A.NO.3878/2014 IN O.S.NO.371/2011 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, IRINJALAKUDA.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.BHAVADASAN, J.

Original Petition (Civil) No.3077 OF 2014

Dated this the 8th day of January, 2015.

J U D G M E N T

Aggrieved by Ext.P5 order, the petitioner in I.A.No.3878/2014 in O.S.No.371/2011 has come up with this original petition. By the said order, the court below rejected the application filed by the petitioner for amendment of written statement.

2. The suit was one for specific performance of an agreement. There was an agreement between the petitioner and the 1st respondent herein for sale of a property and the 1st respondent instituted a suit for return of advance amount which he had paid at the time of entering into contract. In the written statement initially filed by the petitioner, he admitted that he had received Rs.20 lakhs as loan from the 1st respondent and he had given certain signed blank stamp papers affixing required revenue stamps on the same. He had also given two blank cheques to the 1st respondent-plaintiff in the suit. He denied his

signature in the documents. At a later stage when the suit was listed for trial, he came forward with the present application namely, I.A.No.3878/2014 in O.S.No.371/2011 seeking amendment of the written statement. The court below found that the amendment sought for may cause changes in the nature of the pleadings altogether. Therefore, the court below declined to grant the relief sought for by the petitioner.

3. Even though learned counsel for the petitioner tried to impress upon this Court that the view taken by the court below that the petition is highly belated may not be justified, this Court is unable to concur with the contention raised by the learned counsel for the petitioner. As rightly noticed by the lower court, the contention now sought to be raised by way of amendment may cause drastic change to the earlier stand taken by the petitioner and that will certainly cause prejudice to the plaintiff in the suit. The court below has also observed that left with no option, the petitioner has come forward with the present petition. There can be no doubt that the amendment now sought for will cause substantial changes in the case set up by the petitioner herein.

4. The court below was therefore perfectly justified in declining to grant the relief as prayed for by the petitioner.

This petition is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp