

**Haroon vs Guardians' Educational and Charitable Trust**

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**SooperKanoon Citation :** [sooperkanoon.com/1286301](https://sooperkanoon.com/1286301)

**Court :** Kerala

**Decided On :** Jan-19-2024

**Judge :** Honourable Mr.Justice C. Jayachandran

**Appeal No. :** OP(C)/104/2024

**Appellant :** Haroon

**Respondent :** Guardians' Educational and Charitable Trust

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN  
FRIDAY, THE 19TH DAY OF JANUARY 2024 / 29TH POUSHA, 1945  
OP(C) NO. 104 OF 2024 AGAINST THE ORDER/JUDGMENT OS  
36/2023 OF ASSISTANT SESSIONS COURT/PRINCIPAL SUB  
COURT,ATTINGAL PETITIONERS/RESPONDENTS 1 TO 5 IN  
IA.NO.3/2023 IN O.S.NO.36 OF 2023/ RESPONDENTS 1 TO 5 IN  
I.A.BO.4/2023 IN O.S.NO,36 OF 2023/ REVIEW PETITIONERS 1 TO 5  
IN I.A.NO.6/2023 IN O.S.NO.36 OF 2023/DEFENDANTS 1 TO 5 IN  
O.S.NO.36/2023:

1 HAROON AGED 66 YEARS S/O MUHAMMED KUNJU, RESIDING AT AISWARYAM, PALLIPPURAM P.O, THIRUVANANTHAPURAM TALUK, THIRUVANANTHAPURAM DISTRICT,, PIN - 695316 2 SHAMMAS AGED 29 YEARS S/O NIZAR, NIZAR MANZIL, ALUMMOODU, KANIYAPURAM P.O, PALLIPPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT,, PIN - 695301 3 NUJUMUDEEN AGED 49 YEARS S/O. SHAMSUDEEN, SATHYA VILASOM, BUNGLOW, NEAR CRPF, PALLIPPURAM P.O., THIRUVANANTHAPURAM DISTRICT,, PIN - 4 NIZAR AGED 58 YEARS S/O ABDUL AZEEZ, SALIM NIVAS, NAMBIARUKULAM, KANIYAPURAM.P.O., THIRUVANANTHAPURAM. DISTRICT,, PIN - 5 FIROZ AGED 57 YEARS S/O ALIYARU KUNJU, VADAKKATHIL VEEDU, KANIYAPURAM P.O., PALLIPPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT,, PIN - 695301 BY ADVS. P.K.MUHAMMED SALIM KUMAR A.

RESPONDENTS/PETITIONERS 1 TO 3 IN I.A.NO.3/2023 IN O.S.NO.36 OF 2023 & ADDL & ADDL DEFENDANTS 6 TO 16 IN O.S.NO.36/2023 / PETITIONERS 1 TO 3 IN I.A.NO.4/2023 IN O.S.NO.36 OF 2023 AND ..2.. NECESSARY PARTIES/COUNTER PETITIONERS 1 TO 3 IN I.S.NO.3/ 2023 IN O.S.NO.36 OF 2023 /PLAINTIFFS1 TO 3 IN O.S.NO.36/ 2023 AND NECESSARY PARTES :

1 GUARDIANS' EDUCATIONAL AND CHARITABLE TRUST MODERN GARDENS, CRPF, PALLIPPURAM, PALLIPPURAM P.O., PALLIPPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT, REPRESENTED BY ITS SECRETARY, MR. KABEER @ KABEER CHANNANKARA, CHANNANKARA AGED 62 YEARS, S/O ABOOBACKER KUNJU, RESIDING AT DARUL HASEEB, CHANNANKARA P.O., KADINAMKULAM VILLAGE, THIRUVANANTHAPURAM DISTRICT,, PIN - 695301 2 MR. KABEER @ KABEER CHANNANKARA AGED 62 YEARS S/O ABOOBACKER KUNJU, RESIDING AT DARUL HASEEB, CHANNANKARA P.O.,

KADINAMKULAM VILLAGE, THIRUVANANTHAPURAM DISTRICT,,  
PIN - 695301 3 MR. SHIBU.M. AGED 49 YEARS S/O MUHAMMED  
IBRAHIM RESIDING AT T.C. 928, PRAKRITHI, KUMARAPURAM,  
MEDICAL COLLEGE.P.O, THIRUVANANTHAPURAM DISTRICT, PIN -  
695011, FROM KADAYIL VEEDU, PULLAMPARA VILLAGE,  
NEDUMANGADU TALUK, THIRUVANANTHAPURAM DISTRICT,, PIN -  
4 M. SALIM AGED 61 YEARS S/O MUHAMMED MAIDEEN, RESIDING  
AT HIRA, KALIYILIL VEEDU, CHERUKAYALKKARA, EDAVILAKOM,  
MURUKKUMPUZHA P.O., VEILOOR VILLAGE,  
THIRUVANANTHAPURAM TALUK, THIRUVANANTHAPURAM  
DISTRICT,, PIN - 695302 5 ABDUL KHALAM AGED 60 YEARS S/O  
IBRAHIM, RESIDING AT IRSHAD MANZIL, KANIYAPURAM.P.O.,  
THIRUVANANTHAPURAM, PIN - 6 M.M. HASSAN AGED 58 YEARS  
S/O SAIDU MOULAVI, RESIDING AT HIDAYA, PALLIPPURAM.P.O.,  
PALLIPPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN -  
695541 7 SAIFUDEEN AGED 58 YEARS ..3..

S/O M. MUHAMMED HANEEFA, RESIDING AT MAMMOOTIL  
HOUSE, KURAIKKODE, MANGALAPURAM, PALLIPPURAM.P.O.,  
VEILOOR VILLAGE, THIRUVANANTHAPURAM TALUK,  
THIRUVANANTHAPURAM DISTRICT,, PIN - 695302 8 AYOOBKHAN  
AGED 55 YEARS S/O ASANARU PILLAI, RESIDING AT ROSE VILLA,  
KARICHARA, PALLIPPURAM.P.O., THIRUVANANTHAPURAM  
DISTRICT, PIN - 695541 9 BAIJUKHAN AGED 55 YEARS ABDUL  
RAHIM, LOTUS, ANDOORKKONAM.P.O., THIRUVANANTHAPURAM,  
PIN - 695584 10 AHAMMED KABEER AGED 71 YEARS S/O ABDUL  
HAKKIM, RESIDING AT KOODATHITTAYIL, GRAP 353,  
PALLIPPURAM.P.O., THIRUVANANTHAPURAM DISTRICT, PIN -  
695541 11 SAJIL.A. AGED 42 YEARS S/O ABDHUL SALAM,  
RESIDING AT PANOOR HOUSE, NEAR RAILWAY GATE,  
MURUKKUMPUZHA.P.O., THIRUVANANTHAPURAM, PIN - 695302 12  
RIYAS AGED 23 YEARS S/O SHANVAS, RIYAS MANZIL,  
NAMBYARKULAM, KANIYAPURAM.P.O., THIRUVANANTHAPURAM,

PIN - 13 ALI HUQ NAJEETH AGED 69 YEARS S/O ALI HAQ, RESIDING AT PANIKKAKUDI HOUSE, KURAKKANNI, VARKALA VILLAGE, VARKALA TALUK, THIRUVANANTHAPURAM, PIN - 695141  
14 NOUSHAD MUHAMMED AGED 52 YEARS S/O MUHAMMED HANEEFA, RESIDING AT THENGUVILA HOUSE, KODUVAZHANNOOR.P.O., KODUVAZHANNOOR VILLAGE, CHIRAYINKEEZHU TALUK, THIRUVANANTHAPURAM, PIN - 695612  
THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON

19.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..4..

## **J U D G M E N T**

Dated this the 19th day of January, 2024 Petitioners are defendants 1 to 5 in O.S.No.36/2023. They are aggrieved by Ext.P17 and Ext.P19 orders, which allowed an amendment application and dismissed the Review Petition sought for, challenging the said amendment being allowed.

2. Heard the learned counsel for the petitioners

and the learned counsel for 3rd respondent. Though, notice to other respondents has been served by special messenger, they have not chosen to appear before this Court today.

3. According to the petitioners, the amendment

was preferred belatedly and the same was allowed, necessitating the petitioners/defendants to file ..5.. additional written statement. This Court by Ext.P9 judgment, fixed an ultimatum to dispose of the suit afore-referred, within a period of six months from Ext.P9, which commenced from 09.08.2023. It was also pointed out that, as could be seen from Ext.P10 proceedings, the respondents herein carried a challenge to Ext.P9 before the Hon'ble Supreme Court. However, leave was not granted, as could be seen from Ext.P10

**order dated 06.09.2023. The limited relief, now**

pressed before this Court by the petitioners, is to enable them to file additional pleadings based on the amendment and permit them to have a breathing time to adduce evidence. If an extension of the period fixed by this Court under Ext.P9 order is required for the said purpose, the same may also be considered, is the submission made by the learned counsel for the petitioners. ..6..

4. Although, this limited prayer was opposed by

the learned counsel for the respondents, this Court is of the view that, the same can be allowed. The petitioners are only seeking time to file additional pleadings, which was occasioned only on account of the amendment to the plaint and also on account of certain additional defendants being impleaded. The additional defendants may also have to place their pleadings before the Court.

5. In this circumstance, it would be reasonable

to permit the petitioners to file an additional written statement and also, the additionally impleaded defendants to place their written statement before the court below. The same shall be allowed by the court below. The trial, which has already been commenced, will remain stayed, so as to enable the petitioners and additionally impleaded defendants to place on record their ..7.. pleadings/additional pleadings. Once the pleadings are complete, a breathing time shall be granted to the petitioners, as also, the additional defendants, to take steps for the purpose of evidence. Thereafter, the evidence shall continue from the stage, where it is being stalled as per this order. If, in case, any witness is to be recalled, based on the additional pleadings, the same shall be allowed. If the court below finds that the period of six months is required to be extended, the court below will place necessary application before this Court for the same. This Court also clarifies that the period of six months will be reckoned from 06.09.2023, which is the date on which Ext.P10 order was passed by the Hon'ble Supreme Court. It is clarified that, the additional written statement, as also, the written statement of the additional defendants, shall be placed on record within a period of 15 ..8.. days from today. With the afore-referred observations, this Original Petition will stand disposed of. Sd/- C. JAYACHANDRAN JUDGE TR ..9.. APPENDIX OF OP(C) 104/2024 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PLAINT IN

O.S.

NO.36/2023 FILED BY THE RESPONDENTS 1 TO 3 ON THE FILE OF SUB COURT, ATTINGAL DATED 9.3.2023 CLAIMING THEMSELVES AS THE OFFICE BEARERS OF THE TRUST Exhibit P2 TRUE COPY OF THE I.A. NO.1/2023 IN O.S. NO.36/2023 ON THE FILE OF SUB COURT, ATTINGAL DATED 9.3.2023 FOR INJUNCTION FILED BY THE 2ND AND 3RD RESPONDENTS CLAIMING THEMSELVES AS THE OFFICE BEARERS OF THE 1ST RESPONDENT Exhibit P3 TRUE COPY OF THE PRELIMINARY OBJECTION DATED 15.3.2023 FILED BY THE PETITIONERS HEREIN ON THE FILE OF SUB COURT, ATTINGAL TO INJUNCTION APPLICATION I.E. I.A. NO.1/2023 IN O.S. NO.36/2023 Exhibit P4 TRUE COPY OF THE ORDER DATED 13.4.2023 IN I.A. NO.1/2023 IN O.S. NO.36/2023 PASSED BY SUB COURT, ATTINGAL GRANTING TEMPORARY INJUNCTION AGAINST THE PETITIONERS HEREIN Exhibit P5 TRUE COPY OF THE ORDER PASSED BY THE HON'BLE HIGH COURT IN F.A.O. 52/2023 DATED 09/06/2023 Exhibit P6 TRUE COPY OF THE PROCEEDINGS OF THE

ADVOCATE COMMISSIONER WITH RESPECT TO ELECTION NOTIFICATION AND PUBLICATION OF DRAFT VOTERS LIST PUBLISHED BY THE ADVOCATE COMMISSIONER Exhibit P7 TRUE COPY OF THE REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER IN F.A.O. NO.52/2023 DATED 7.7.2023 ON THE FILE OF HON'BLE HIGH COURT OF KERALA Exhibit P8 TRUE COPY OF THE PROCEEDINGS OF ADVOCATE COMMISSIONER DECLARING THE ELECTION RESULT AS PER ORDER DATED 9.6.2023 OF THE HON'BLE HIGH COURT OF KERALA IN F.A.O. NO.52/2023

Exhibit P9 TRUE COPY OF THE JUDGMENT PASSED BY THE HON'BLE HIGH COURT IN F.A.O. NO. ..10.. Exhibit P10 TRUE COPY OF THE ORDER IN SPECIAL LEAVE PETITION 18890/2023 DATED 6.9.2023 OF THE HON'BLE SUPREME COURT Exhibit P11 TRUE COPY OF THE WRITTEN STATEMENT IN

O.S. NO.36/2023 DATED NIL ON THE FILE OF SUB COURT, ATTINGAL FILED BY THE PETITIONERS HEREIN/DEFENDANTS Exhibit P12 TRUE COPY OF

THE IMPEADING PETITION I.E. I.A. NO.3/2023 IN O.S. NO.36/2023 DATED 26.9.2023 ON THE FILE OF SUB COURT, ATTINGAL FILED BY THE RESPONDENTS 1 TO 3 HEREIN Exhibit P13 TRUE COPY OF THE AMENDMENT PETITION I.E. I.A. NO.4/2023 IN O.S. NO.36/2023 DATED 26.9.2023 ON THE FILE OF SUB COURT, ATTINGAL FILED BY THE RESPONDENTS 1 TO 3 HEREIN Exhibit P14 TRUE COPY OF THE COUNTER AFFIDAVIT TO IMPEADING PETITION I.A. NO.3/2023 IN O.S. NO.36/2023 ON THE FILE OF SUB COURT, ATTINGAL DATED 16.10.2023

Exhibit P15 TRUE COPY OF THE ORDER IN I.A. NO.3/2023 IN O.S. NO.36/2023 OF THE SUB COURT, ATTINGAL DATED 1.1.2023 Exhibit P16 TRUE COPY OF THE OBJECTION TO I.A. NO.4/2023 AMENDMENT PETITION IN O.S. NO.36/2023 ON THE FILE OF SUB COURT, ATTINGAL DATED 17.10.2023 Exhibit P17 TRUE COPY OF THE ORDER IN I.A. NO.4/2023 IN O.S. NO.36/2023 OF THE SUB COURT, ATTINGAL ALLOWING AMENDMENT PETITION IN I.A. NO.4/23 IN O.S. Exhibit P18 TRUE COPY OF THE REVIEW PETITION IN I.A. NO.6/2023 IN O.S. NO.36/2023 ON THE FILE OF SUB COURT, ATTINGAL DATED 6.1.2024 Exhibit P19 TRUE COPY OF THE ORDER IN I.A. NO.6/2024 IN O.S. NO.36/2023 OF THE SUB COURT, ATTINGAL DISMISSING EXHIBIT-P18 REVIEW PETITION DATED 11.1.2024 Exhibit P20 TRUE COPY OF THE CASE STATUS DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE SUB COURT, ATTINGAL SHOWING THE PROCEEDINGS ..11.. OF THE COURT ON 10/01/2024 WITH RESPECT TO O.S. NO.36/2023 Exhibit P21 TRUE COPY OF THE CASE STATUS DOWNLOADED

FROM THE OFFICIAL WEBSITE OF THE SUB COURT, ATTINGAL SHOWING THE PROCEEDINGS OF THE COURT ON 11/01/2024 WITH RESPECT TO O.S. NO.36/2023 Exhibit P22 TRUE COPY OF THE CASE STATUS DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE SUB COURT, ATTINGAL SHOWING THE PROCEEDINGS OF THE COURT ON 12/01/2024 WITH RESPECT TO O.S. NO.36/2023