

Jimmi vs Rani Thomas

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SooperKanoon Citation : sooperkanoon.com/1370674

Court : Kerala

Decided On : Jun-30-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : OP(C)/1298/2023

Appellant : Jimmi

Respondent : Rani Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945 OP(C)
NO. 1298 OF 2023 AGAINST THE ORDER DATED 13.4.2023 IN
I.A.No.7/2022 IN OS 123/2022 OF PRINCIPAL SUB COURT /
COMMERCIAL COURT, THRISSUR
PETITIONERS/PETITIONERS/PLAINTIFFS:

1 JIMMI AGED 54 YEARS S/O LONAPPAN, MALIAKKAL MOYALAN
HOUSE, SC GOKULAM SPRING TOWER, KANJIKUZHI PO: 680604,
KANJIKUZHI DESOM, VIJAYAPURAM VILLAGE, KOTTAYAM TALUK
AND DISTRICT REPRESENTED BY POWER OF ATTORNEY AGENT

SIMMI M L, W/O NOBLE GRESIOUS, AGED 48, OTHALAMOOTTIL HOUSE, TC 533/1, PERUNTHANNI, PETTA VILLAGE, THIRUVANANTHAPURAM 695008, RESIDING AT FLAT NO: 1E, CONDORE CASSIA, KARIMANAL PO: KULATHOOR, THIRUVANANTHAPURAM, PIN - 695583

2 SHAMMI M L AGED 53 YEARS S/O LONAPPAN, MALIAKKAL MOYALAN HOUSE, M G ROAD, PATTURAIKKAL DESOM, THRISSUR VILLAGE/TALUK, RESIDING AT FLAT NO: G4, PLEASANT RESIDENCY, SILENT STREET, NEAR RITAS, KURIACHIRA DESOM AND VILLAGE, THRISSUR, PIN - 3 NIMMI M L AGED 50 YEARS W/O

STANLY, VADAKKUMCHERY HOUSE, THORAVUR DESOM/VILLAGE/PO: , ANGAMALI, ERNAKULAM DISTRICT, PIN - 4

SIMMI M.L (@ CEMMI) AGED 48 YEARS W/O NOBLE GRESHIOUS, OTHALAMOOTTIL HOUSE, TC 533/1, PERUNTHANNI, PETTA VILLAGE, THIRUVANANTHAPURAM 695008, RESIDING AT FLAT NO: 1E, CONDORE CASSIA, KARIMANAL PO: KULATHOOR, THIRUVANANTHAPURAM, PIN - 695583

BY ADV K.G.BALASUBRAMANIAN OP(C) NO. 1298 OF 2023 2 RESPONDENTS/RESPONDENTS/DEFENDANTS: 1 RANI THOMAS AGED 45 YEARS D/O THOMAS, AGED 45, PULLANAMKUZHIYIL HOUSE, POOMALA DESOM, THRISSUR, NOW RESIDING AT LOVE SHORE ENCLAVE, FLAT 5A, KOORKENCHERY VILLAGE/PO:, PIN - 2 SREEKALA AGED 44 YEARS W/O AJITHKUMAR, KOLOTH HOUSE, PEARL PARK, PRA 18D, KRISHNA KUNJI, AYYANTHOLE PO: THRISSUR DISTRICT, PIN - 680003 THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 30.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C) NO. 1298 OF 2023 3

JUDGMENT

The plaintiffs came up aggrieved by the order of non-grant of attachment before judgment after the appearance of the parties. Ext.P4 order was passed after

hearing the rival parties without exhausting the normal remedy by way of appeal. But the learned Counsel for the petitioners fairly submitted that no appeal will lie against Ext.P4 order as per the legal position settled by a Division Bench of this Court in Mathukutty Mathew v. Sunny [2015 (1) KLT 620]. But the said decision is rendered under the premise that the impugned order will come under the purview of Rule 5 of Order 38 CPC. A matter which would come under the purview of Rule 6 of Order 38 CPC is appealable under clause 1(q) of Order XLIII CPC. Rule 5 deals with submission of an application for attachment before judgment and power to issue show cause notice to the respondents why he should not furnish security for the amount. By virtue of OP(C) NO. 1298 OF 2023 4 Sub-Rule (3) of Rule 5 of order 38 CPC the court can

order a conditional attachment (ex-parte order) in

the meantime against which no provision for appeal incorporated under Order 43 CPC. But there is provision for appeal when the matter is proceeded and decided after the appearance of the opposite party and it will come under the purview of Rule 6 of Order 38 CPC and is an appealable order. Hence reserving the larger remedy available to the parties the present petition is hereby dismissed as there is no scope for exercising the jurisdiction under Article 227 of the Constitution. The first appellate court has to consider the application of Section 14 of the Limitation Act so as to get the period excluded. Reserving all these rights, the present O.P(C) is hereby dismissed. Sd/- P.SOMARAJAN JUDGE LEK OP(C) NO. 1298 OF 2023 5 APPENDIX OF OP(C) 1298/2023 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE PLAINT DATED 2.4.2022 IN OS 123/2022 IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE, THRISSUR Exhibit P2 A TRUE COPY OF IA 7/2022 DATED 18.11.2022 Exhibit P3 A TRUE COPY OF COUNTER FILED BY THE RESPONDENTS TO IA 7/2022 DATED 10.3.2023 Exhibit P4 A TRUE COPY OF ORDER DATED 13.4.2023 ON IA 7/2022