

Jayasree Divakaran vs Sunilkumar

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Court : Kerala

Decided On : Oct-09-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : OP(C)/2071/2023

Appellant : Jayasree Divakaran

Respondent : Sunilkumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN MONDAY, THE 9TH DAY OF OCTOBER 2023 / 17TH ASWINA, 1945 OP(C) NO. 2071 OF 2023 AGAINST THE ORDER/JUDGMENT OS 427/2019 OF MUNSIF COURT, KODUNGALLUR PETITIONER/PETITIONER/DEFENDANT: JAYASREE DIVAKARAN AGED 58 YEARS W/O. THAYAVALLIYIL DIVAKARAN, KOOLIMUTTAM VILLAGE & DESOM, KODUNGALLUR TALUK. BY ADVS. P.A.ABDUL JABBAR MUHAMMED SHAFFI T.S.ABDUL KHADER RESPONDENT/RESPONDENT/PLAINTIFF: SUNILKUMAR AGED 53 YEARS S/O. KATTUPARAMBIL APPU, KOOLIMUTTAM VILLAGE & DESOM, KODUNGALLUR TALUK. BY ADV

T.K.AJITHKUMAR (VALATH) THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

JUDGMENT

The petitioner impugns Ext.P6 order, whereby, the learned Munsiffs Court, Kodungallur, has rejected her

application for amendment of the Written Statement. She explains that it was omitted to be averred in her Written Statement that the plaintiff did not have any financial capacity to advance Rs.6,70,000/- as loan, at any time, either on 01.01.2019 or before. She submitted that this assertion is vital to her defence; and therefore, that the learned judge ought not have refused permission to make the amendment, as has been denied through Ext.P6.

2. In response to the afore submissions of the petitioner, as made by her learned counsel - Sri.P.A.Abdul Jabbar, learned counsel for the respondent - Sri.T.K.Ajithkumar,

submitted that Ext.P6 is irreproachable because, the application for amendment has been made by the petitioner after the suit was listed for trial. He submitted that, going by the proviso to Order VI Rule 17 of the Code of Civil Procedure (CPC), any such amendment could have been allowed only for ..3.. valid cause, which has not been, however, established by the petitioner. He thus prayed that this Original Petition be dismissed.

3. I am afraid that neither can I find favour with the afore submissions of the respondent, nor can I grant

imprimatur to Ext.P6 order, because, all which the petitioner/defendant seek is to amend her Written Statement, to add a line that the plaintiff did not have any financial capacity to advance the suit amount on 01.01.2019, or on any other date. This does not change the nature of defence taken by her; and the rigour of the proviso, as mentioned above, would not preclude her from seeking the amendment, since it

only has the nature of supplementing the defence. In any event, it is certain that, if this amendment is not now allowed, it would become a valid ground for the petitioner to impel a further cause against the decree to be issued in future.

4. At this time, Sri.P.A.Abdul Jabbar - learned counsel

for the petitioner, submitted that, if this Court is inclined to allow this Original Petition, then his client will not stand in the way, if the suit, which is of the year 2019 - though incorrectly ..4.. shown in Ext.P6 as being of the year 2023 - is directed to be disposed of at the earliest. In the afore circumstances, I allow this Original petition

and set aside Ext.P6; with a consequential direction to the learned Munsiff Court, Kodungallur, to allow the application filed by the petitioner for amendment of the Written Statement and to, thereafter, dispose of the Suit itself, as expeditiously as is possible, but not later than eight months from the date of receipt of a copy of this judgment.

Sd/- DEVAN RAMACHANDRAN, JUDGE ACR ..5.. APPENDIX OF OP(C) 2071/2023 PETITIONER EXHIBITS Exhibit 1 TRUE COPY OF ORIGINAL PLAINT DATED 11.04.2019 FILED IN O.S. NO.427/2019. Exhibit-P2 TRUE COPY OF THE WRITTEN STATEMENT DATED 08.12.2021 FILED IN O.S. NO. Exhibit-P3 TRUE COPY OF THE AMENDED PLAINT DATED 29.07.2022 Exhibit-P4 TRUE COPY OF THE SAID ADDITIONAL WRITTEN STATEMENT DATED 08.09.2023. Exhibit-P5 TRUE COPY OF I.A. NO. 3/2023 IN O.S. NO. 427/2019 DATED 18.09.2023. Exhibit-P6 TRUE COPY OF THE ORDER DATED 18.09.2023 PASSED IN I.A. NO.3/2023 IN O.S. NO.427/2019 BY THE LEARNED MUNSIFF COURT, KODUNGALLUR. Exhibit-P7 TRUE COPY OF THE I.A. NO.6/2023 FILED IN O.S. NO. 427/2019 DATED 21.09.2023.

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