

(2022) 01 KL CK 0207

In the High Court Of Kerala

Case No : Original Petition (C) No. 161 Of 2022

Ganga Devi.G

APPELLANT

Vs

Dr.Lathakumari.K

RESPONDENT

Date of Decision : 27-01-2022

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2022) 01 KL CK 0207

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : V.Philip Mathews, Gibi.C.George

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. The defendant in O.S.No.26/2015 on the file of the Sub Court, Karunagappally, is the petitioner herein and she filed this Original Petition under the

Article 227 of the Constitution of India, challenging dismissal of I.A.NO.4/2022 by the learned Sub Judge, Karunagappally as per order dated

13.01.2022.

2. Heard the learned counsel for the petitioner on admission.

4. It is submitted by the learned counsel for the petitioner that one amendment sought for is only to correct a word and other amendment sought for is

in regard to the incorporation of the following in the written statement.

As the continuation of the second paragraph, add "defendant borrowed an amount of rupees one lakh on 11-05-2013 by cheque No.358279 rupees, one lakh

on 12-10-2013 by Cheque No. 865467 and an amount rupees four lakhs on 17-12-2013 by cheque No.865469 of SBT Nediavila. Defendant returned all these amounts by cash with interest at the rate of 48%. Plaintiff regularly visited defendant's residence and collected the amount with interest. There is no balance is

pending. The transaction was fully and finally settled on 15th April 2014 by paying Rs. 35000/-. On that day plaintiff along with nearby resident one

Gopakumar.G visited defendant's house and received the said amount. Also the plaintiff has several other cases for realization of money pending in other courts

wherein also the documents are Negotiable instruments which are fabricated and altered by her in typographic nature. The cheque furnished by the plaintiff in

the Hon'ble Court is materially altered and fabricated for illegal gain.

5. According to the learned counsel for the petitioner, though no reasons stated in the affidavit in support of this petition regarding compliance of

proviso to Order 6 Rule 17, it is submitted by the learned counsel for the petitioner that since trial not commenced in this matter, compliance of Order

6 Rule 17 is not necessary.

6. In this context, it is necessary to address the history of the case. Originally this case was tried and the suit was decreed as per decree dated

30.07.2016. Thereafter, this Court as per order in R.F.A No.658/2016 dated 21.10.2021 set aside the decree and judgment and remanded the matter.

In paragraph No.9 of the judgment, the purpose of remand has been categorically stated. The same is extracted as under:

The decree and judgment of the court below hence cannot be sustained and liable to be set aside. I do so. The case is remanded back to the trial court so as to

afford an opportunity to cross examine the plaintiff on the additional proof affidavit and documents Exts.A3 to A5.

7. Going by the extracted portion, it is discernible that the case is remanded back to the trial court so as to afford an opportunity to cross-examine the

plaintiff on the additional proof affidavit and documents Exts.A3 to A5 that would go to show that the cross-examination effected based on the original

proof affidavit filed by the plaintiff has been confirmed by the order of remand. In such a case, when an amendment application if moved with a view

to introduce a new plea of discharge, which was known to the defendant at the time of filing the original written statement, should have to comply the

proviso to Order 6 Rule 17 of CPC and failure to do so, would definitely a reason for dismissing the petition.

8. Though the learned Sub Judge, in so many words stated those things, the order of the learned Sub Judge would go to show that an amendment

application filed at a belated stage after remanding the matter, cannot be allowed.

IÂ Â cannotÂ Â findÂ Â anyÂ Â perversityÂ Â or arbitrariness in this case to have interference with the order. Therefore, this original petition is

liable to be dismissed even without admission.

Accordingly, this Original Petition is dismissed.

It is made clear that the word sought to be corrected 'her' instead of 'here' is of no serious consequence, as the sentence, if read the meaning, to be

understood is that of the word 'her' and not 'here'.