

**(2009) 07 KL CK 0124**

**In the High Court Of Kerala**

**Case No :** Unnumbered I.A.s ... in Writ Petition (C) No. 17480 of 2008

Nalan

APPELLANT

Vs

Vinesh

RESPONDENT

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**Date of Decision :** 17-07-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Kerala High Court Rules, 1971 — Rule 152, 152(2)

**Citation :** (2009) 4 KLT 784

**Hon'ble Judges :** Thottathil B. Radhakrishnan, J

**Bench :** Single Bench

**Advocate :** S.M. Prem, K.P. Santhi, P.K. Nijoy and Nisha G. Tharamal, for the Appellant; C.K. Vidyasagar, for the Respondent

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## **Judgement**

Thottathil B. Radhakrishnan, J.—These applications are filed stating that the petitioners therein desire to be heard in the matter and they may be so heard in relation to the Writ Petition in hand. The Registry has objected to the sustainability of these applications on the ground that the petitioners have not stated that they seek impleadment and as to whether they seek to join as petitioners or as respondents, in the Writ Petition.

2. Chapter 11 of the Rules of the High Court of Kerala, 1971, hereinafter referred to as the "Rules", guides the practice and procedure in writ jurisdiction. Rule 152, falling therein, contains two Sub-rules. The first among them provides that the court may order notice of the petition to any person not made party thereto. That rule only recognises the power and privilege of the High Court to do so while exercising the constitutional powers in writ jurisdiction, Sub-rule (2) of Rule 152 provides that at the time of hearing of the petition for admission or at a later stage, any person, who desires to be heard in the matter and appears to the court to be a proper person to be heard, may be heard, notwithstanding that he is not a party, but subject to such conditions as to costs or otherwise as the court may deem fit to impose. Therefore, notwithstanding that a person is not a party

to a petition, meaning thereby a proceeding under Article 226 of the Constitution, this Court may hear him, if he desires to be heard in the matter and appears to the court to be a proper person to be heard. Hence, the rule, as it is worded, does not make it obligatory for the person invoking that rule to apply for impleadment as understood in the realm of the CPC and provisions applicable before various courts and tribunals dealing with statutory matters. This has an avowed object. The parameters of jurisdiction under Article 226, as disclosed by the large swing of judicial precedents would advise that the court would look into all matters that may appear to be relevant to the conspectus of the situational justice, because so much is its power in writ jurisdiction, though great restraint will be maintained in exercising that power. This is the reason why even a person, who may not suffer an order in a proceeding, or succeed in the litigation, could, if necessary, request the court that he may be heard in relation to a matter. The prerogative to hear him or not depends on the court concluding as to whether he is a proper person to be heard. If the court decides so, he may be heard notwithstanding that he is not a party to the litigation.

3. For the aforesaid reasons, it is unnecessary for a person invoking Rule 152 of the Rules to state specifically as to whether he seeks impleadment in a Writ Petition under Article 226 of the Constitution, that too, whether as petitioner or respondent.

4. Resultantly, the objection taken by the Registry to number these interlocutory applications is overruled.

However, a perusal of the entire papers of this Writ Petition shows that the writ petitioner and all the respondents in the Writ Petition are not made respondents to these I.As., though they are entitled to be heard. The Registry has not noted that, obviously, because such defect can be identified only after these I.As. reach the case file and such defect may not be noticeable by the Court Fee Examiner. Therefore, the office will return these I.As. for curing such defect and if that is rectified and the I.As. re-presented, the same shall be numbered and listed for consideration.