

---

**(2008) 06 KL CK 0041**  
**In the High Court Of Kerala**  
**Case No : C.R.P. No. 218 of 2003**

Shareena Jaleel

APPELLANT

Vs

Mrs. Kamala Bai and Others

RESPONDENT

---

**Date of Decision :** 06-06-2008

**Acts Referred:**

**Citation :** (2008) 06 KL CK 0041

**Hon'ble Judges :** Harun-UI-Rashid, J

**Bench :** Single Bench

**Advocate :** C.K. Aravindaksha Menon, for the Appellant; P.A. Ahamed, for the Respondent

---

## Judgement

Harun-UI-Rashid, J.—This revision petition is filed by the plaintiff in O.S. 551/1997 on the file of the Principal Munsiff's Court, Kochi. The suit is filed for a declaration that the revision petitioner is the absolute owner of the plaint schedule building and property obtained by her by virtue of sale deed No. 5297/1994 of the Cochin Sub registry and the 4th defendant or any other persons have no manner of right in the said properties and sale deed No. 153/1952 of the Cochin Sub registry alleged to have been executed in favour of the 4th defendant is not binding on the plaint schedule properties. The parties hereinafter referred to as plaintiff and defendants.

2. While the suit was pending the 4th defendant in the suit expired. Thereafter the suit was dismissed on 19.01.1999 for non-impleadment of the legal heirs of the 4th defendant. The plaintiff filed application for restoration of the suit. It is stated by her in the petition for condonation of delay that her husband was conducting the case on behalf of her and he was out of station throughout, in connection with the establishment of a school at Ooty and therefore her husband was forced to stay in Ooty for more than a year. The plaintiff also submitted that she is a housewife and she does not know how to deal with the case. Only when the plaintiff's husband came to know that the suit was dismissed on 19.1.1999 for nonimpleadment of the legal heirs of the 4th defendant the plaintiff's

husband made enquiry and collected the addresses of the legal heirs of the 4th defendant. According to the plaintiff she has filed necessary interlocutory applications for restoration of the suit, for impleading the legal heirs of the 4th defendant, for setting aside the abatement and for condonation of delay in filing the application to set aside the abatement respectively. According to the plaintiff the impugned order was passed without considering the documents produced by the plaintiff and without considering the oral evidence adduced in support of the I.A. for condonation of delay. The court below disbelieved the version of the plaintiff and held that the reasons stated in the affidavit for condonation of delay is not proved and also held that the alleged reason is not a sufficient ground to allow that petition. In that surmise, all the I.As were consequently dismissed.

3. The question whether the plaintiff has proved the averments in the petition for condonation of delay was re-agitated before me. The court below may be correct in saying that the reasons stated are not proved strictly. The facts and circumstances stated by the plaintiff should have been taken into account while considering the case as to whether the suit has to be restored to file or not. It is a fact that the suit was dismissed solely for the reason that the legal heirs of the 4th defendant are not impleaded. The nonimpleadment may not be an intentional one. It is clear from the attendant circumstances that the delay caused in impleading the legal heirs was due to the reasons stated in the affidavit. Moreover, it has come out in evidence that the counsel for the plaintiff has advised her to file another suit, obviously, that also may be a reason for not filing the application within the reasonable time. Whatever it may be the circumstances, the case of the plaintiff has not been considered by the Court below on merits. I am of the view that an opportunity shall be given to the plaintiff to contest her case on merits. Therefore the impugned order passed by the Court below is set aside and the interlocutory applications filed by the plaintiff stands allowed on condition that the plaintiff shall pay a sum of Rs. 3,000/- to respondents 5 to 7 or their counsel within a period of 3 weeks from today. The parties shall appear before the court below on 3.7.2008.

4. This C.R.P is disposed of as above. There will be no order as to costs.