



OP(C) NO. 2146 OF 2026

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2026:KER:57604

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 30TH DAY OF JULY 2026 / 8TH SRAVANA, 1948

OP(C) NO. 2146 OF 2026

AGAINST THE ORDER DATED 19.02.2026 IN RPIA 30/2025
IN O.S.NO.570 OF 2024 OF ADDITIONAL MUNSIF COURT,
CHERTHALA

PETITIONER(S)/PETITIONER/PLAINTIFF:

VIRONI AUGUSTINE
AGED 66 YEARS
W/O AUGUSTINE, PILLERKETTU, AROOR. P.O,
AROOR VILLAGE, ALAPPUZHA DISTRICT,
PIN - 688534

BY ADV.
SRI.ROY CHACKO

RESPONDENT(S)/COUNTER PETITIONER/DEFENDANT:

JOSEPH
AGED 62 YEARS
S/O GEORGE, VELIYIL VEETIL,
EZHUPUNNA SOUTH. P.O, KODAMTHURUTH VILLAGE,
ALAPPUZHA DISTRICT, PIN - 688533

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
30.07.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



EASWARAN S., J

O.P.(C) No.2146 of 2026

Dated this the 30th day of July, 2026

JUDGMENT

The suit, instituted for recovery of advance money, came to be dismissed by the trial court solely on the ground that the plaintiff had failed to take steps for service of summons. Subsequently, an application filed for restoration of the suit under Order IX Rule 9 of the Code of Civil Procedure was not considered by the trial court in its proper perspective. This court is compelled to note the manner in which the trial court has dealt with the restoration application.

2. Heard Shri Roy Chacko, learned counsel appearing for the Petitioner.

3. O.S.No 570 of 2024 is a suit for recovery of money filed by the petitioner. The case was filed on



24-9-2025 and the same was posted to 26-10-2024. Since it was a holiday the case was posted to 18-1-2025. It is stated that on the said date fresh summons was ordered. The case was thereafter listed on 21-3-2025 for return of the summons. On the said date, the suit was dismissed finding that the plaintiff failed to take steps. The question therefore arises is whether the suit could have been dismissed merely on the ground that the plaintiff had not taken fresh steps for service of summons. The trial court dismissed the suit principally on the premise that, despite repeated directions, the plaintiff had failed to take steps, and further observed that where summons are returned unserved, the plaintiff is required to apply within seven days for issuance of fresh summons. Such an approach cannot be sustained. Thereafter, the plaintiff filed a restoration petition. By order dated 19-2-2026, the restoration petition was dismissed. More than the dismissal of the restoration application, what concerns this court is the manner in which the trial court dismissed it.



4. Before this court proceeds to test the validity of the reasoning given by the trial court, it is imperative to consider whether the requirement to apply for fresh summons within 7 days on its return is mandatory or not?. In **Sudha Chandrasekharan K. v. Sasikala and Others [2012 (3) KLT 941]**, this Court held that the requirement of applying for fresh summons within seven days is directory and not mandatory. That being so, the trial court ought to have adopted a pragmatic and justice-oriented approach by granting the plaintiff a reasonable opportunity to take fresh steps for effecting service. The dismissal of the suit without extending such an opportunity was manifestly erroneous and resulted in a serious failure of justice

5. The plaintiff, feeling aggrieved by the dismissal of the suit, filed an application for restoration of the suit. True, that the affidavit of the plaintiff could have been better worded. But, the attempt made by the plaintiff cannot be faulted. The grievance of the petitioner was that the trial court



could have granted an opportunity to take out a fresh summons.

6. Acting on the restoration petition, the trial court passed the impugned order. The restoration petition was dismissed stating that the remedy of the petitioner is to file a fresh suit and not the restoration application. Even if the conclusion reached by the trial court was erroneous, it would not have mattered to this court. But the manner in which consideration was undertaken by the trial court is what calls for judicial scrutiny.

7. As stated above, the application for restoration mainly proceeded on the basis that the plaintiff was not extended an opportunity to take out fresh summons to the defendant. However, the trial court appears to have traversed beyond the parameters of judicial evaluation on the merits of the plea made by the plaintiff and went on to comment on the legal acumen of the counsel for the plaintiff and going to the



extent of commenting on his comprehension to assimilate the provisions of CPC. The observations made in the impugned order touching upon the competence of the counsel who drafted the application are wholly unwarranted.

8. As a matter of fact, if the court was of the view that the legal position canvassed by the learned counsel was untenable, it ought to have confined itself to recording its finding with reference to the applicable statutory provisions and judicial precedents. Instead, the court proceeded to comment upon the propriety of the plaintiff invoking Order IX Rule 9 of the Code. Such remarks were wholly unnecessary, particularly when the restoration application could very well have been treated as one invoking the inherent jurisdiction of the court under Section 151 of the Code of Civil Procedure. The trial court ought to have approached the issue in a more measured manner. The court should have shown greater restraint while dealing with these issues. The refusal to invoke the inherent powers in the facts



of the present case to render justice, leads to an irresistible conclusion that there is a failure of justice on the part of the trial court.

9. On an overall consideration of the materials placed before this Court, this Court is satisfied that the learned Munsiff committed a grave jurisdictional error both in dismissing the suit and in rejecting the application seeking its restoration. The impugned orders have resulted in a miscarriage of justice warranting interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

10. Accordingly, this Original Petition is allowed. Exts. P5 and P7 are hereby set aside. O.S. No. 570 of 2024 shall stand restored to the file of the Munsiff Court, Cherthala. The petitioner shall be granted a period of ten days from the date of production of the copy of this judgment to take appropriate steps, in accordance with law, for effecting



service of summons upon the defendants.

Sd/-

EASWARAN.S.
JUDGE



APPENDIX OF OP(C) NO. 2146 OF 2026

PETITIONER EXHIBITS

- EXHIBIT-P1 TRUE COPY OF THE PLAINT IN OS NO. 570 OF 2024 DATED 23.09.2024 ON THE FILE OF THE ADDITIONAL MUNSIFF'S COURT, CHERTHALA
- EXHIBIT-P2 TRUE COPY OF THE APPLICATION DATED 23.09.2024 FILED BEFORE THE ADDITIONAL MUNSIFF'S COURT, CHERTHALA AS IA OF 2024 IN OS NO.570 OF 2024
- EXHIBIT-P3 TRUE COPY OF THE LAWYER NOTICE DATED 24.05.2024 ISSUED TO THE RESPONDENT/DEFENDANT
- EXHIBIT-P4 TRUE COPY OF THE ACKNOWLEDGEMENT CARD SIGNED BY THE RESPONDENT/DEFENDANT DATED 24.05.2024
- EXHIBIT-P5 TRUE COPY OF THE JUDGEMENT DATED 21.03.2025 IN OS NO.570 OF 2024
- EXHIBIT-P6 TRUE COPY OF THE APPLICATION, RESTORATION PETITION NO.30 OF 2025 DATED 24.03.2025 IN OS NO.570 OF 2024
- EXHIBIT-P7 TRUE COPY OF THE ORDER DATED 19.02.2026 IN RESTORATION PETITION NO.30 OF 2025 IN OS NO.570 OF 2024 ON THE FILES OF THE ADDITIONAL MUNSIFF'S COURT, CHERTHALA