

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 6TH DAY OF APRIL 2022 / 16TH CHAITHRA, 1944

OP(C) NO. 375 OF 2022

AGAINST ORDER DATED 23.12.2021 IN IA 1/2021 IN I.A

NO.1782/2021 IN O.S NO.283/2018 ON THE FILE OF THE

MUNSIFF'S COURT, PALAKKAD

PETITIONER/RESPONDENT/PLAINTIFF:

SOBHANA,
AGED 62,
D/O P. M GOVINDAN NAMBOOTHIRI, FLAT NO.1/832(2),
MANI IYER ROAD, PUTHUR AMSOM, PALAKKAD-678002.

BY ADVS.
B.PREMNATH (E)
SARATH M.S

RESPONDENTS/PETITIONERS/DEFENDANTS:

- 1 PRESIDENT,
RAJANI APARTMENT RESIDENTS WELFARE ASSOCIATION
(RARWA),
RAJANI APARTMENT, MANI IYER ROAD, PUTHUR AMSOM,
PALAKKAD-678002.
- 2 SECRETARY,
RAJANI APARTMENT RESIDENTS WELFARE ASSOCIATION
(RARWA),
RAJANI APARTMENT, MANI IYER ROAD, PUTHUR AMSOM,
PALAKKAD-678002.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
30.03.2022, THE COURT ON 06.04.2022 DELIVERED THE
FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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O.P(C). No.375 of 2022

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Dated this the 6th day of April, 2022

J U D G M E N T

This is an Original Petition filed under Article 227 of the Constitution of India, challenging order dated 23.12.2021 in I.A.No.1/2021 in I.A.No.1782/2021 in O.S.No.283/2018 by the plaintiff in the above Suit arraying defendants as the respondents herein. In this case, though notice served to the other side, nobody appeared.

2. An interesting, rather important question arises in this petition is, whether the general supervisory power available to the District Judge under Section 17 of the Kerala Civil Courts Act, will be available to the District Judge to pass judicial orders

inclusive of one directing the civil courts in the district to dispose of matters pending before the subordinate courts in a time bound manner?

3. It is submitted by the learned counsel for the petitioner that as per the common order passed by the learned District Judge, Palakkad (First Additional District Judge in charge) as per order dated 23.12.2021 in I.A.No.1/2021 in I.A.No.1782/2021 filed by the plaintiff was allowed and thereby the learned District Judge directed the Munsiff Court to dispose of petitions pending before the trial court. According to the learned counsel for the petitioner, the said power is not available to the District Judge, de hors the provisions of the procedural law, Code of Civil Procedure as well as the Civil Rules of Practice. Going by the impugned order, it appears that the said order was passed, after giving emphasis to Section 17 of the Kerala Civil Courts Act. For clarity, Section 17 of the Kerala Civil Courts Act, 1957 is extracted hereunder:

"17. District Judge to control Civil Courts of district:-- Subject to the other provisions of this Act and to the Rules for the time being in force and prescribed by the High Court in this behalf, the general control over all the Civil Courts under this Act in any District is vested in the District Judge."

4. The learned District Judge observed that in view of the wide scope and spectrum of the above general control, the District Court could pass an order directing the trial court to dispose of the petition at the earliest.

5. Though a report from the Judge, who passed the order was obtained, he could not justify the said judicial power that he exercised under Section 17 of the Kerala Civil Courts Act. But he submitted that he had ordered the same with *bona fides*.

6. In this context, it is relevant to note that the enactment of the Civil Courts Act is generally intended to deal with the functioning of the subordinate courts and the general control over all the civil courts given to the District Judge within the District, is confined in matters of administration and not strictly on judicial side to pass orders of the nature impugned. To put it

differently, it has to be held that by invoking the power under Section 17 of the Kerala Civil Courts Act, the District Judge has no power to pass judicial orders of the nature impugned or any other orders de hors the provisions of the substantive and procedural law governing the field and the power of general control is confined only in matters of administration. Therefore, the order impugned is liable to be set aside.

7. This Original Petition accordingly stands allowed. The impugned order stands set aside.

Registry is directed to forward copies of this judgment to all District Judges, for information and future guidance.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF OP(C) 375/2022

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE PHOTOCOPY OF PLAINT DATED
20.06.2018 IN O.S NO.283/2018 FILED BY
THE PETITIONER BEFORE THE MUNSIFF'S
COURT, PALAKKAD.
- Exhibit P2 TRUE PHOTOCOPY OF THE WRITTEN STATEMENT
DATED 26.09.2018 IN O.S NO.283/2018 ON
THE FILE OF MUNSIFF'S COURT, PALAKKAD.
- Exhibit P3 TRUE PHOTOCOPY OF THE ORDER DATED
23.12.2021 IN I A NOS.1/2021 IN I A
NO.1782/2021 AND I A NO.02/2021 IN I A
NO.1329/2018 IN O.S NO.283/2018 AND O.S
NO.388/2021 OF THE DISTRICT COURT,
PALAKKAD.