



2025:KER:80273

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 27TH DAY OF OCTOBER 2025 / 5TH KARTHIKA, 1947

OP (FC) NO. 621 OF 2025

AGAINST THE ORDER DATED 20.06.2025 IN IA 71/2024 IN

OP NO.141 OF 2024, FAMILY COURT, KASARAGOD

PETITIONER/PETITIONER:

SHAHABEEN HAMEED, AGED 26 YEARS
D/O ABDUL HAMEED M.K.,
R/AT ASIF MAHAL, AYITTY,
TRIKARIPUR, P.O., HOSDURG TALUK,
KASARGOD, DISTRICT.
NOW R/ AT LAKEVIEW, THEKKEKKAD,
PADNEKAPPURAM P.O., HOSDURG TALUK,
KASARGOD DISTRICT
REP. POWER OF ATTORNEY, SULAIKA P.,
AGED 46, W/O MUHAMMED KUNHI P.C,
R/ AT JASMIN MAHAL, THEKKEKKAD,
PADNEKAPPURAM P.O., HOSDURG TALUK,
KASARAGOD, PIN - 671312.

BY ADVS.
SRI.RAHUL SASI
SMT.NEETHU PREM



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RESPONDENT/RESPONDENT:

MUHAMMED AJNAS A.B
AGED 32 YEARS
S/O ABOOBACKER V., R/ AT NEST,
THAYAL BAZAR, PADNE, PADNE P.O.,
HOSDURG TALUK, KASARGOD, DISTRICT,
PIN - 671312.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 27.10.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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'C.R.'

JUDGMENT

Devan Ramachandran, J.

The petitioner filed OP No.141/2024 before the learned Family Court, Kasaragod, which was dismissed. He, thereupon, filed an application to restore the Original Petition - invoking the provisions of Order IX, Rule 9 of the Code of Civil Procedure (CPC), accompanied by an application to condone the delay of 118 days in filing it, but they have also been dismissed.

2. The petitioner has approached this Court against the aforesaid orders, through this Original Petition.

3. We are afraid that we cannot find this Original Petition to be maintainable because, we



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are of the firm view that, within the rigour of Order XLIII, Rule 1(c) of the CPC, only an Appeal will lie. In fact, we notice that the Registry had earlier raised an objection to such effect, but we had directed to number this Original Petition, at the request of the learned counsel for the petitioner, who asserted that he would be able to convince this Court to the contrary.

4. It is indubitable that Order XLIII, Rule 1(c) of the CPC, allows an Appeal against an order rejecting an application under Order IX, Rule 9 thereof (in a case open to Appeal) for an order to set aside the dismissal of a Suit.

5. We see no reason why the petitioner should be permitted to prosecute this Original



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Petition under Article 226 of the Constitution of India, when an alternative efficacious remedy is statutorily provided.

In the afore circumstances, we dismiss this Original Petition; however, without prejudice to the right of the petitioner to approach this Court again in terms of law.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M. B. SNEHALATHA

JUDGE

akv



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APPENDIX OF OP (FC) 621/2025

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE O.P. NO. 141 OF 2024 FILED UNDER SECTION 7(1) OF EXPLANATION (D) OF THE FAMILY COURT ACT IS PRODUCED DATED 20.06.2025
- EXHIBIT P2 THE TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 3 OF 2024 IN O.P. NO. 141 OF 2024 FILED FOR CONDONATION OF DELAY IS PRODUCED
- EXHIBIT P3 THE TRUE COPY OF THE R.P.I.A. NO. 71 OF 2024 IN O.P. NO. 141 OF 2024 FOR RESTORATION IS PRODUCED
- EXHIBIT P4 THE CERTIFIED COPY OF THE COMMON ORDER PASSED IN I.A NO.3 OF 2024 AND R.P.I.A NO. 71 OF 2024 IS PRODUCED