

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 25<sup>TH</sup> DAY OF AUGUST 2022 / 3RD BHADRA, 1944

OP(C) NO. 1618 OF 2022

OS 500/2019 OF MUNSIF COURT, MUVATTUPUZHA

**PETITIONER:**

ANIL GEORGE  
AGED 54 YEARS  
S/O. N. GEORGE, EDAPPALAKKATTU HOUSE,  
PIRAMADOM P.O., PAMPAKUDA VIA  
PIN - 686667

BY ADVS.  
K.C.ELDHO  
S.BIJILAL  
EBEE ANTONY  
ARUNDHATHY K. ALIAS  
ALMAJITHA FATHIMA

**RESPONDENTS:**

- 1 FR. JOHN V. JOHN  
AGED 57 YEARS  
S/O. JOHN MATHEW,  
RESIDING AT VADAKKEMUTTAPPILLIL HOUSE, PAMPAKUDA PO,  
ONAKKUR VILLAGE, MUVATTUPUZHA TALUK, KOOHATTUKULAM  
PIN - 686667
- 2 FR. SIBI MATHEW VARGHESE  
AGED 32 YEARS  
S/O. M. M. VARGHESE, RESIDING AT TRINITY RETIREMENT  
HOUSE, PASSIONAGE, KOLENCHERY, PIN - 682311
- 3 FR. REJI PAUL  
AGED 39 YEARS  
S/O. PAUL, RESIDING AT VETTUKATTIL HOUSE, PANCODE KARA,  
IYKARANADU VILLAGE, PANCODE PO, KUNNATHUNADU TALUK,  
PIN - 686667
- 4 BABY VARGHESE  
AGED 66 YEARS  
S/O. VARGHESE, RESIDING AT KANNEKATTU HOUSE, MEMURY  
KARA, MEMURY VILLAGE, PAMPAKUDA PO, MUVATTUPUZHA TALUK,

PIN - 686667

- 5 BABY VARGHESE  
AGED 55 YEARS  
S/O. VARGHESE, AND RESIDING AT KUTTATTUKUDIYIL  
HOUSE, KAYANADU KARA, MARADY VILLAGE, PIRAMADOM PO,  
MUVATTUPUZHA TALUK, PIN - 686667
- 6 ABRAHAM K.V.  
AGED 68 YEARS  
S/O. VARGHESE, KANNEKATTU HOUSE, MARADY VILLAGE,  
MUVATUPUZHA TALUK, PIN - 686667
- 7 JOY M.A.  
AGED 63 YEARS  
S/O. ULAHANNAN, MEPPARAMBATHU HOUSE, ONAKKOOR  
VILLAGE, MUVATTUPUZHA, PIN - 686667
- 8 ELIAS A. K.  
AGED 49 YEARS  
S/O. ULAHANNAN, MEPPARAMBATHU HOUSE, ONAKKOOR  
VILLAGE, MUVATTUPUZHA, PIN - 686667
- 9 GIRI CHERIAN  
AGED 48 YEARS  
S/O. CHERIAN, VETTIKKATHADATHIL HOUSE, MARADY  
VILLAGE, MUVATTUPUZHA, PIN - 686667
- 10 PAUL MATHEW  
AGED 34 YEARS  
S/O. BABY K PAUL, KIZHAKKEDATU HOUSE, ONAKKOOR  
VILLAGE, MUVATTUPUZHA, PIN - 686667
- 11 BINU ABRAHAM  
AGED 48 YEARS  
S/O. ABRAHAM K. P. KANNEKATTTU HOUSE, ONAKKOOR  
VILLAGE, MUVATTUPUZHA, PIN - 686667
- 12 BABY PAULOSE  
AGED 68 YEARS  
S/O. PAULOSE, KURUTTAMPURATHU HOUSE, NORTH  
PIRAMADAM POST, PAMPAKUDA, MUVATTUPUZHA TALUK,  
PIN - 686667
- 13 ROY K. C  
AGED 57 YEARS  
S/O. K. P. CHACKO, KADUVAKKATTU HOUSE, NORTH  
PIRAMADAM POST, PAMPAKUDA, MUVATTUPUZHA TALUK,

PIN - 686667

- 14 THE CHIEF SECRETARY TO GOVERNMENT  
GOVERNMENT OF KERALA, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
- 15 THE DIRECTOR GENERAL OF POLICE AND STATE POLICE  
CHIEF, POLICE HEAD QUARTERS, THIRUVANANTHAPURAM,  
PIN - 695001
- 16 THE DISTRICT COLLECTOR  
CIVIL STATION, KAKKANADU, ERNAKULAM, PIN - 682030
- 17 THE DISTRICT SUPERINTENDENT OF POLICE  
ERNAKULAM RURAL, ALUVA , PIN - 683101
- 18 DEPUTY SUPERINTENDENT OF POLICE,  
MUVATTUPUZHA , PIN - 686661
- 19 THE STATION HOUSE OFFICE,  
KOOATHTUKULAM , PIN - 686662

SRI.S SREEKUMAR

SMT. SYLAJA S.L. GOVERNMENT PLEADER

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON  
25.08.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**Dated this the 25<sup>st</sup> day of August, 2022**

### **JUDGMENT**

The petitioner assails the order in I.A.No.3998/2019 in O.S.No.500/2019(Ext.P9) passed by the Court of the Munsiff, Muvattupuzha.

2. The concise case of the petitioner in the original petition is that: the petitioner is the additional 4<sup>th</sup> defendant in the suit filed by the respondents 1 and 2, seeking a decree of injunction. The petitioner has filed Ext.P2 written statement in the suit. The respondents 1 and 2 have filed Ext.P3 application, to direct the respondents 15 and 16 to provide adequate police protection to them for the enforcement of the order of temporary injunction dated 18.11.2019 passed by the court below in I.A. No.3268/2019. The petitioner has resisted the application by filing Ext.P4 counter affidavit. The suit has been adjourned from time to time due to the recalcitrance of the respondents 1 and 2, to proceed with

the trial. The petitioner was constrained to approach this Court and file O.P.(C)No.1260/2022 for the expeditious disposal of the suit. This Court, by Ext.P7 judgment, has directed the court below to dispose of the suit and all pending applications with an outer time limit of six months. The petitioner has produced Ext.P7 judgment before the court below with Ext.P8 memo. Immediately, the court below has passed the impugned Ext.P9 order. Ext.P9 order has been passed without considering Ext.P4 counter affidavit filed by the petitioner to Ext.P3 application. Ext.P9 is erroneous, perverse and improper. Hence, the original petition.

3. Heard; Sri,K.C. Eldho, the learned Counsel appearing for the petitioner and Sri.S.Sreekumar, the learned Senior Counsel appearing for the respondents 1 and 2 and the learned Government Pleader appearing for the respondents 14 to 19.

4. Sri. K.C. Eldho, argued that even though the respondents 1 and 2 have sought for police aid to implement the order in I.A. No.3268/2019, the said order

has not attained finality. The petitioner has challenged the said order by filing CMA No.33/2019. Even though the appeal was dismissed, the petitioner has now filed Review Petition No.13/2020 before the Appellate Court, which is pending consideration. It is at this juncture, the respondents 1 and 2 have pressed for implementation of the order passed in I.A.No. 3268/2019. Now by the passing of the impugned order the review petition will be rendered infructuous. Moreover, the court below has not adverted to any of the contentions raised by the petitioner in Ext.P4 counter affidavit filed to Ext.P3 application. Hence, the impugned order may be set aside.

5. Sri.S.Sreekumar, vehemently countered the above submission by arguing that the order of temporary injunction was passed by the court below as early as on 18.11.2019. The petitioner unsuccessfully challenged the order before the Appellate Court. Now, he is said to have filed a review petition. There is no order of stay interdicting the interim injunction. It is only because the

petitioner and other defendants are flouting the order of temporary injunction, that the respondents 1 and 2 were constrained to file I.A.No.3998/2019, seeking police aid to enforce the interlocutory order of injunction. He relied on the decision of this Court in **Johnson Kurakose v. Fr.Thomas Paul Ramban and others** [2019(1) KHC 31], wherein this Court has categorically held that the orders of temporary injunction passed by the civil courts have to be implemented by the civil courts themselves and the same cannot be left unattended. He submitted that the original petition is veiled attempt to flout temporary injunction order. The suit was listed for evidence on 16.11.2020. Then, the petitioner filed O.P. (C)No.1703/2020 before this Court, and the trial was adjourned. Again the suit was listed on 01.09.2021 and 06.10.2021, but the petitioner got the trial adjourned. The oblique intention of the petitioner is only to procrastinate the final determination of the suit. There is no bonafides in the original petition, which may be dismissed.

6. The point is whether there is any error or illegality in Ext.P9 order passed by the court below.

7. The suit was instituted in the year 2019. The court below has passed an order of temporary injunction in I.A.No.3268/2019 on 18.11.2019. Undisputedly, the petitioner's challenge was declined by the Appellate Court by its judgment in CMA No.33/2019. Even though the petitioner contends that he has filed R.P.No.13/2020, to review the judgment, there is no order interdicting the implementation of the order in I.A.No.3268/19.

8. The respondents 1 and 2 have filed I.A.No.3998/2019 to see that the order passed in I.A. No.3268/2019 is implemented its letter and spirit. The petitioner has opposed the application by filing Ext.P4 counter affidavit, inter alia, contending that the order may not be implemented till a final decision is taken in R.P No.13/2020. But the court below has passed the impugned Ext.P9 order.

9. The Honourable Supreme Court in **Meera Chauhan v. Harsh Bishnoi and Others** [(2007)12 SCC

201] observed thus:-

*“ At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order”*

10. The above principal has again been reiterated by the Division Bench of this Court in **Shaji M.K.and Another v. State of Kerala and others**[2018(3) KHC 69].

*“ 15. Therefore, where there is disobedience or breach of an order of temporary injunction passed by the Civil Court under Order XXXIX R1 of the Code of Civil Procedure, the remedy open to the plaintiff/applicant is either to apply that Court under Order XXXIX R2A of the Code seeking an order to attach the property of the person guilty of such disobedience or breach and for an order to detain such person in civil prison for a term not exceeding three months. In appropriate cases, the plaintiff/applicant can invoke the inherent powers of the Civil Court under S.151 of the Code, which includes the power to grant police protection to secure compliance of the order of temporary injunction. When there are adequate provisions under the Code which enables the Civil Court to enforce and implement its orders, the*

*plaintiff/applicant cannot approach this Court under Art.226 of the Constitution of India seeking police protection to secure compliance of the order of temporary injunction."*

11. It is following the ratio decidendi in the above authoritative precedents and as the petitioner and other defendants are flouting the order of interlocutory injunction, that the respondents 1 and 2 filed I.A.No.3998/2019 to ensure that the defendants don't flout the order in I.A. No.3268/2019. Ultimately, it is the majesty of the court and its orders that have to upheld and enforced.

Going by the pleading and materials on record, I do not find any error in Ext.P9 order warranting interference by this Court under Article 227 of the Constitution of India. The original petition fails and is hence dismissed.

Sd/-

**C.S.DIAS, JUDGE**

**APPENDIX OF OP(C) 1618/2022**

PETITIONER EXHIBITS

- Exhibit P1                    A TRUE COPY OF THE PLAINT IN OS NO. 500 OF 2019 FILED BEFORE MUNSIFF'S COURT, MUVATTUPUZHA
- Exhibit P2                    A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER AGAINST EXHIBIT P1 SUIT
- Exhibit P3                    A TRUE COPY OF IA NO.3998 OF 2019 IN OS NO. 500 OF 2019 BEFORE MUNSIFF COURT, MUVATTUPUZHA
- Exhibit P4                    A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN EXHIBIT P3
- Exhibit P5                    A TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT OF INDIA DATED 27/10/2020 IN CIVIL APPEAL NOS. 7115 - 7116 OF 2019
- Exhibit P6                    A TRUE COPY OF THE ADVANCE PETITION IA NO.19 OF 2022 IN OS NO.500 OF 2019 BEFORE MUNSIFF COURT, MUVATTUPUZHA
- Exhibit P7                    A TRUE COPY OF THE JUDGMENT IN OP(C) NO. 1260 OF 2022 DATED 10TH AUGUST 2022 BEFORE HIGH COURT OF KERALA, ERNAKULAM
- Exhibit P8                    A TRUE COPY OF THE MEMO DATED 12/8/2022 SUBMITTED BY THE COUNSEL FOR THE PETITIONER
- Exhibit P9                    THE CERTIFIED COPY OF THE ORDER IN IA NO. 3998 OF 2019 IN OS NO. 500 OF 2019 BEFORE MUNSIFF COURT, MUVATTUPUZHA