

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.S.SATHEESACHANDRAN

MONDAY, THE 30TH NOVEMBER 2009 / 9TH AGRAHAYANA 1931

WP(C).No. 34038 of 2009(O)

OS.230/2008 of PRL.M.C.KOZHIKODE-I

PETITIONER(S):

**1. THE EXECLUSIVE CLUB, REP. BY
ITS SECRETARY, O.P. RAMAN ROAD,
CALICUT.**

**2. THE SECRETARY, THE EXCLUSEIVE
CLUB O.P. RAMAN ROAD, CALICUT.**

**BY ADV. SRI.SHYAM PADMAN
SRI.A.RANJITH NARAYANAN**

RESPONDENT(S):

**T.P. AHAMMED KOYA, S/O.T.V. MOHAMMED
KOYA, AGED 55 YEARS, MEHAR, GOVT. GUST
HOUSE ROAD, WEST HILL, CALICUT.**

ADV. SRI.SANTHARAM.P FOR R1

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30/11/2009, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

S.S.SATHEESACHANDRAN, J.

W.P.(C).NO.34038 OF 2009 ()

Dated this the 30th day of November, 2009

J U D G M E N T

The writ petition is filed seeking mainly the following relief:

i. to issue a writ of mandamus or any other appropriate writ, direction or order directing the Principle Munsiff Court-I, Kozhikode to issue carbon copy of the order in I.A.No.4185/2009 and not to proceed with the trial in O.S.No.230/2008 on its file till carbon copy is made available and breathing time given to the petitioners to challenge the same.

2. Petitioners are the defendants in O.S.No.230 of 2008 on the file of the Principal Munsiff Court-I, Kozhikode. The above suit is filed by the respondent seeking a declaration that his suspension and dismissal from the 1st defendant Club was illegal and void and also for an injunction restraining the defendants from interfering with his right to visit and enjoy

the benefits in the Club premises. Suit claim was resisted by the petitioners/defendants by filing a written statement. The trial of the above case is now in progress. At the stage when the evidence of the plaintiff was over, the defendants moved an application for examining two witnesses, whose names were not included in its previous witness schedule, to substantiate his case. Ext.P3 is the copy of that application. That application was declined by the court below, and evidence in the case was closed. Petitioners/defendants have therefore filed this writ petition seeking the indulgence of this Court for a writ/direction/order to the court below to permit them to examine the witnesses cited in their Ext.P3 application.

2. Notice given, the respondent/plaintiff has entered appearance. I heard the counsel on both sides. Having regard to the submissions made and taking note of the facts and circumstances presented, I find denial of opportunity to the defendants to substantiate their contentions for the reason that there was belated filing of the witness schedule, in the

given facts of the case, would amount to denying them an opportunity to establish their defense in the case. There will be a direction to the court below to permit the defendants to examine the witnesses cited, provided, they produce the witnesses, after issuing them by party summons for the witnesses, on the date fixed for examination and also subject to payment of cost of Rs.1,000/- (Rupees thousand only) to the plaintiff within one week from the date of this judgment. If cost is tendered as directed, the court below shall fix the date for examination of the witnesses cited earlier and issue by party summons for service on those witnesses by the petitioners/defendants. Subject to the above directions, the writ petition is disposed.

Handover a copy of the judgment to the counsel on both sides and send a copy of the judgment to the court concerned forthwith.

S.S.SATHEESACHANDRAN
JUDGE

prp

