

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE V.CHITAMBARESH
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

FRIDAY, THE 19TH DAY OF AUGUST 2016/28TH SRAVANA, 1938

F.A.O.No. 130 of 2016

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AGAINST ORDER DATED 05.12.2015 IN I.A. NO. 517/2015 IN O.S. NO.
163/2008 OF THE SUB COURT, KATTAPPANA
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APPELLANT/PETITIONER/PLAINTIFF:

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KUMILY VALLEY ECO RESORTS PVT. LTD.
A COMPANY INCORPORATED UNDER THE COMPANIES ACT,
WITH REGISTERED OFFICE AT VII/705 D, NH BYE PASS,
KUNDANNUR JUNCTION, MARADU (PO), MARADU VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT,
REPRESENTED BY DIRECTOR, MM ABDUL BASHEER,
AGED 45 (FORTY FIVE) YEARS,
SON OF MUCHETH SAITHU MUHAMMED**

**BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

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- 1. P.A.JACOB
AGED ABOUT 67 (SIXTY SEVEN) YEARS,
SON OF LATE P.O.ABRAHAM, CHAIRMAN,
POABS GROUP AND RESIDING ATPADINJATTOTHARAYIL
PANACHAYIL HOUSE, KUTTOOR PO,
THIRUVALLA 689 106 (DIED)**
 - 2. LEEMOL BINU
AGED 35 (THIRTY FIVE) YEARS,
WIFE OF BINU K MATHEW,
RESIDING ATPADINJATTOTHARAYIL
PALLIYAMPIL HOUSE,
WEST OTHARA PO, THIRUVALLA TALUK 689 106**
 - 3. K.A. ABRAHAM
AGED 57 (FIFTY SEVEN) YEARS,
SON OF ABRAHAM, RESIDING AT KANNANKERIL HOUSE,
KUTTOOR MURI, KUTTOOR VILLAGE,
THIRUVALLA TALUK 689 106**

4. **VALSAMMA ABRAHAM**
AGED 52 (FIFTY TWO) YEARS, WIFE OF K.A.ABRAHAM,
RESIDING AT KANNANKERIL HOUSE,
KUTTOOR MURI, KUTTOOR VILLAGE,
THIRUVALLA TALUK 689 106
5. **ALEYAMMA JACOB**
AGED 60 (SIXTY) YEARS, WIFE OF P.A. JACOB
RESIDING AT PADINJATTOTHARAYIL PANACHAYIL HOUSE,
WEST OTHARA PO, THIRUVALLA TALUK 689 106
6. **ABRAHAM JACOB**
AGED 39 (THIRTY NINE) YEARS,
SON OF P.A. JACOB
RESIDING AT PADINJATTOTHARAYIL PANACHAYIL HOUSE,
WEST OTHARA PO, THIRUVALLA TALUK 689 106
7. **THOMAS JACOB**
36 (THIRTY SIX) YEARS, SON OF P.A. JACOB
RESIDING AT PADINJATTOTHARAYIL PANACHAYIL HOUSE
WEST OTHARA PO, THIRUVALLA TALUK 689 106
8. **JOSEPH JACOB**
AGED 33 (THIRTY THREE) YEARS,
SON OF PA JACOB,
RESIDING AT PADINJATTOTHARAYIL PANCHAYIL HOUSE,
WEST OTHARA PO, THIRUVALLA TALUK 689 106

R2 TO R8 BY ADV.SRI.N.JAMES KOSHY

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
19-08-2016, ALONG WITH F.A.O. NOS. 131/2016, 132/2016 & 134/2016, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DCS

APPENDIX

PETITIONER(S) ANNEXURES :- NIL

RESPONDENT(S) ANNEXURES:-

- ANNEXURE A1 : TRUE COPY OF THE JUDGMENT DATED 21.10.2010 IN O.S. NO. 161/2008 OF THE LEARNED SUB JUDGE, KATTAPPANA**
- ANNEXURE A2 : TRUE COPY OF THE COMMON ORDER DATED 27.08.2011 IN I.A. NO. 1453 IN O.S. NO. 161 OF 2008 AND CONNECTED CASES OF THE LEARNED SUB JUDGE, KATTAPPANA**
- ANNEXURE A3 : TRUE COPY OF THE JUDGMENT DATED 21.06.2013 IN O.S. NO. 161/2008 OF THE LEARNED SUB JUDGE, KATTAPPANA**
- ANNEXURE A4 : TRUE COPY OF THE JUDGMENT DATED 10.12.2014 IN O.S. NO. 161/2008 OF THE LEARNED SUB JUDGE, KATTAPPANA**

//TRUE COPY//

P.A. TO JUDGE

DCS

V.CHITAMBARESH & K.HARILAL JJ.

F.A.O.Nos.130, 131, 132 & 134 of 2016

Dated this the 19th day of August, 2016

J U D G M E N T

Chitambaresh, J.

Orders refusing to set aside the dismissal of the suits for default and to restore the same are impugned. It is of course true that the suits for realisation of money were dismissed for default twice earlier. But then the plaintiffs contend that the suits were not ripe for hearing and that the report of the Advocate Commissioner were awaited.

2. The plaintiffs had filed an application to adjourn the suits when the same were listed for trial. Such applications were filed one week before accompanied by a copy of the flight ticket. The authorised representative of the plaintiffs in the suits (which are connected) was to leave for abroad for business purpose.

3. The court below has not only dismissed the applications for adjournment, but also dismissed the suits for default. The applications filed to restore the suits to file have been dismissed by the orders impugned. We do feel that an opportunity should be afforded to the plaintiffs to have the suits disposed

of on merits.

4. The impugned orders are set aside and the suits will stand restored to file subject to the following conditions:-

- i) The plaintiffs in each of the suits shall pay a sum of ₹.10,000/- each (₹.40,000/- in total) as costs to Mr.James Koshy, Advocate on behalf of the contesting defendants.
- ii) The costs shall be paid within one month from today failing which the appeals would stand dismissed.
- iii) The suits in the event of being restored to file on compliance of the above conditions, shall be disposed of within a period of six months.

The First Appeals from Orders are disposed of with the above directions.

Sd/-
V.CHITAMBARESH,
Judge.

Sd/-
K.HARILAL,
Judge.

nj/19.08.2016