

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

WP(C) NO. 18870 OF 2005

OS NO.8 OF 2002 OF PRINCIPAL SUB COURT, THALASSERY

PETITIONER:

BADI GOVINDAN,
S/O.KUNHAPPA,
KANNADIPARAMBA AMSOM, DESOM,
P.O. KANNADIKPARAMBA, KANNUR DISTRICT.

BY ADVS.
SRI.K.V.SOHAN
SMT.K.AMBILY
SMT.SREEJA SOHAN.K.

RESPONDENTS:

DAYAROTH ARIKOTHAN ROHINI,
D/O. KUNHAMBU, PALLIKKUNNU AMSOM,
CHALAD DESOM, P.O. PALLIKKUNNU,
KANNUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.******W.P(C).No.18870 of 2005-U******Dated this the 11th day of March, 2025******J U D G M E N T***

This Writ Petition has been filed by the petitioner, who is the plaintiff in O.S.No.8/2002 on the files of the Sub Court, Thalassery, under Article 227 of the Constitution of India seeking the following reliefs:

“(a) issue a writ of mandamus or any other appropriate writ directing the Sub Judge, Thalassery to restore I.A.No.1966 of 2004 and after verification of the date of deposit with the original challan receipt or conducting such other enquiry from the Bank, pass orders implementing Ext.P1 decree;

and

(b) pass such other orders, as this Hon’ble Court may deem fit to grant in the circumstances of the case.”

2. Heard the learned counsel for the petitioner.

3. The learned counsel for the petitioner pointed out that decree for specific performance of a contract of sale was granted on 09.12.2003 with direction to the petitioner to deposit the balance



consideration within a period of three months. Thereafter on 08.03.2004 the petitioner deposited the amount and filed Ext.P2 I.A.No.1966/2004 to appoint a court official to execute the sale deed in respect of the plaint schedule property. But the said petition was dismissed on the finding that deposit was not made within time.

4. Even though 'order for lodgement delivered' without legible date showing deposit of Rs.50,000/- by the petitioner was produced before this Court, in order to clarify as to whether any amount was deposited as directed, a report from the learned Sub Judge, Thalassery, has been called for. Accordingly, it was reported by the learned Principal Sub Judge, Thalassery, that Rs.50,000/- was deposited on 08.03.2004 though the said amount was lapsed.

5. In this matter, in fact, suit was decreed on 09.12.2003 with direction to the plaintiff to deposit the balance consideration to the tune of Rs.50,000/- (Rupees Fifty thousand only) within three months from the date of the decree. Accordingly, the petitioner deposited the said amount on 08.03.2004. However, the learned Principal Sub Judge dismissed the application holding that the deposit was not effected within



time. Going by the order, it could be noticed that the learned Sub Judge misunderstood the calculation of three months period. Therefore, the legal question arises for consideration in this context is how 'a month' or 'months' to be calculated to find out its expiry? Under Section 3(35) of the General Clauses Act, 1897, 'month' shall mean a month reckoned according to the British calendar.

6. In *Bibi Salma Khatoon Vs. State of Bihar*, AIR 2001 SC 3596, the Apex Court dealt with provisions of Section 16(3) of the Bihar Land Reforms Act, 1961, which provided that benefits under the said act could be availed of if an application is made within three months of the date of registration of the documents of transfer. Posing the question as to what was meant by the word 'month', Supreme Court held that British calendar would mean Gregorian calendar. It was held that when the period prescribed is a calendar month running from any arbitrary date, the period of one month would expire upon the day in the succeeding month corresponding to the date upon which the period starts.

7. The Apex Court in *State of H. P. Vs. M/s. Himachal Techno Engineers*, 2010 AIR SCW 5088 considered the period of



limitation prescribed under sub-section (3) of Section 34 of the Arbitration and Conciliation Act, 1996. While Section 34 relates to application for setting aside arbitral award, sub-section (3) thereof prescribes the period of limitation for such application which is three months. In that context, the Apex Court examined the meaning of the word ‘month’ and held that a month does not refer to a period of 30 days but refers to the actual period of a calendar month.

8. It was clarified that if the month is April, June, September or November, the period comprising the month will be 30 days; if the month is January, March, May, July, August, October or December, the month will comprise of 31 days; but if the month is February, the period will be 29 days or 28 days depending upon whether it is a leap year or not. After referring to Section 3(35) of the General Clauses Act, 1897, it was held that the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of some months being longer than the rest.

9. Therefore, it was held that when the period prescribed is three months (as contrasted from 90 days) from a specific date, the said



period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending on the months, it may mean 90 days or 91 days or 92 days or 89 days.

10. Thus it has to be held that period of expiry of one month or months, as the case may be, shall be decided on fixing the date corresponding to the date upon which the period starts, that is to say, if period of one month starts from 15.01.2025, one month would be completed on 15.02.2025 (but actually 32 days). The period of one month starts from 15.02.2025 ends on 15.03.2025 even though the days are only 29, (since 2025 is not leap year, but if the year is leap year, then it will be 30 days). Similarly, when the period of one month would start on 15.04.2025, the same would end on 15.05.2025 (31 days). In fact, in the instant case the decree was passed on 09.12.2003 and deposit of the balance consideration was on 08.03.2004. Therefore, the deposit was made very well within the time and, therefore, the learned Principal Sub Judge went wrong in dismissing the I.A holding that deposit was not made within time. In view of the above, the Writ Petition is liable to be allowed.



Accordingly, the Writ Petition is allowed and I.A.No.1966 of 2004 stands restored back to file with direction to the learned Principal Sub Judge, Thalassery, to proceed further in accordance with law, after impleading the legal representatives of the respondent.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



APPENDIX OF WP (C) 18870/2005

PETITIONER'S EXHIBITS

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| EXHIBIT P1 | TRUE COPY OF THE DECREE IN O.S.NO.8 OF 2002
DATED 09.12.2003 OF THE SUBORDINATE JUDGE'S
COURT, THALASSERY. |
| EXHIBIT P2 | TRUE COPY OF THE APPLICATION FILED BY THE
PETITIONER BEFORE THE SUB COURT, THALASSERY,
AS I.A.NO.1966 OF 2004 DATED 15.07.2004 ALONG
WITH ORDERS THEREON DATED 16.11.2004. |
| EXHIBIT P3 | TRUE PHOTOCOPY OF THE CHALLAN RECEIPT
NO:374/2004 DATED 08-03-2004. |