



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946

CON.CASE(C) NO.1937 OF 2024

AGAINST THE JUDGMENT DATED 05.12.2023 IN OP(C) NO.2492 OF
2023 OF HIGH COURT OF KERALA

PETITIONER/ADVOCATE OF THE 1ST AND 2ND DEFENDANTS IN THE
TRIAL COURT IN O.S.NO.838/2018 ON THE FILE OF THE
ADDL.MUNSIFF'S COURT, KOTTAYAM, WHO ARE PETITIONERS IN
O.P(C) NO.2492/2023 OF THIS COURT IN WHICH ANNEXURE-1
JUDGMENT WAS PASSED AND RESPONDENT NOS.1 AND 2 IN
I.A.NOS.8/2024 & 4/2022 IN O.S.NO.838/2018.:

P.M.KURIAN, AGED 61 YEARS,
S/O.LATE P.M.MATHAI, ADVOCATE,
ENROLMENT NO.K 719/C1994, P.M KURIAN ASSOCIATES,
1ST FLOOR, NEW KANDATHIL BUILDING,
NEAR COLLECTRATE, KOTTAYAM, PIN- 686002,
RESIDING AT PULLUKOTTAYIL HOUSE,
NEAR RAMAVARMA UNION CLUB, KOTTAYAM,
KOTTAYAM P.O, KOTTAYAM VILLAGE,
KOTTAYAM TALUK, PIN - 686001.

BY ADVS.
VADAKARA V.V.N.MENON
N.S.GOPAKUMAR

RESPONDENTS/LEARNED PREVIOUS MUNSIFF IN THE ADDL.MUNSIFF'S
COURT, KOTTAYAM ON THE FILE OF WHOM O.S.NO.838/2018 WAS
CONDUCTING AND THE COUNSEL OF THE 1ST AND 3RD PLAINTIFFS
IN THE TRIAL COURT ALONG WITH 1ST AND 3RD PLAINTIFF'S IN
THAT SUIT WHO ARE RESPONDENT NOS.1 & 2 IN O.P.(C)
No.2492/2023 AND APPLICANTS IN I.A.NOS.8/2024 AND 4/2022
IN O.S.NO.838/2018:

- 1 DEEPA MOHANAN, W/O.N.M SATHEESAN, AGED 42 YEARS,
PREVIOUSLY WORKING AS MUNSIFF,
ADDL. MUNSIFF'S COURT COURT COMPLEX, KOTTAYAM,
AND PRESENTLY WORKING AS JUDICIAL FIRST CLASS
MAGISTRATE-II, COURT COMPLEX, COLLECTORATE P.O.,
KOTTAYAM - 686 002,
RESIDING AT MALANKARA QUARTERS,
MUTTAMBALAM P.O., KOTTAYAM, PIN - 686004.



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- 2 P.V.JOSEPH, S/O.LATE VARGHEESE, AGED 67 YEARS,
ADVOCATE, ENROLMENT NO.K/575/1987,
KUDAKASSERIL BUILDING, K.K ROAD,
KOTTAYAM, PIN - 686002,
RESIDING AT PARAVETTIYAL HOUSE, CHERPUNKAL,
CHEMPALLAVIS P.O, KOTTAYAM TALUK, PIN - 686584.
- 3 P.R.SATHEESAN, S/O.K.R GAURI, AGED 64 YEARS,
RESIDING AT K.P 18/482(B) CHIRATHALAKKAL,
KALLAYAM P.O, KUDAPPANA, VATTAPARA VILLAGE ,
THIRUVANANTHAPURAM,
THIRUVANATHAPURAM TALUK, PIN - 695005.
- 4 P.R.SATHY AMMA, AGED 57 YEARS, W/O.LATE SABU,
KRISHNA BHAVAN, CHINGAVANAM, NATTAKAM P.O.,
NATTAKAM VILLAGE, KOTTAYAM TALUK, PIN - 686013.

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP
FOR ADMISSION ON 29.07.2024, THE COURT ON 02.08.2024
DELIVERED THE FOLLOWING:



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'CR'

JUDGMENT

Dated, this the 2nd day of August, 2024

This Court is called upon to perform the unfortunate task of answering allegations of contempt against i). a judicial officer, ii). the counsel appearing for the plaintiffs and iii). plaintiff nos.1 and 3 on rather strange, weird and specious grounds. Curiously, the petitioner herein is the Counsel appearing for defendants 1 and 2 in O.S.No.838/2018, of the Additional Munsiff's Court, Kottayam (hereinafter referred to as 'the suit' for brevity). The instant proceeding, being a clear abuse of the process of the court, as would be unfurled by the following facts and discussion, is a matter of serious concern. The petitioner - supposedly a responsible member of the legal profession and an important stakeholder in the dispensation of



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justice to the parties before the court - has stooped down to the extent of hurling unfounded and wanton allegations of contempt, not only against a judicial officer, but also against his own counter part appearing for the plaintiffs, a clear aberration to the fraternity and comity expected to be maintained between the members of the legal profession.

2. Initially, a defect was noted by the Registry as to whether it is proper to array a judicial officer and the counsel for the parties as contemnors in this proceedings. Having regard to the nature of the allegations levelled, this Court queried to the learned counsel for the petitioner as to whether the petitioner is serious in prosecuting this Contempt Case, to which query, an emphatic affirmation was the answer. In view of Section 16 of the Contempt of Courts Act, 1971, which deals with contempt by



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Judge, Magistrate etc., this Court directed the contempt case to be numbered. It was so done and the learned counsel for the petitioner was heard in extenso, as regards the maintainability and entertainability of the contempt petition, as also, the mode and manner in which contempt is sought to be alleged against the respondents/ alleged contemners.

3. On maintainability, Sri.Vadakara V.V.N.Menon, learned counsel for the petitioner would heavily rely on a judgment of the Honourable Supreme Court in S.K.Sarkar v. Vinay Chandra Misra [(1981) 1 SCC 436], to point out that the High Court has ample power under Section 15 of the Contempt of Courts Act to initiate contempt action *suo motu* on the application of a private person, not being the Advocate-General. Learned counsel argued that, if such private person is a 'responsible member of the legal profession', the



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Court should act *suo motu*, as has been specifically held by the Honourable Supreme Court in paragraph no.19 of S.K.Sarkar (supra). Emphasis was given to the fact that the petitioner herein is the counsel appearing for the defendants 1 and 2 in the suit, wherefore it is imperative for this Court to initiate contempt, *suo motu*. S.K.Sarkar (supra) was subsequently followed by a three Judges bench in Delhi Judicial Service Association v. State of Gujarat and others and connected matters [AIR 1991 SCC 2176]. On the basis of the said two decisions, the instant contempt case is quite maintainable, especially when it is filed by the petitioner, 'a responsible member of the legal profession', is the argument advanced.

4. On facts, the contempt is sought to be alleged in the following manner:

The suit is one for partition, after adjudging a



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Will dated 25.10.1991 as null, void and illegal. The matter reached this Court under Article 227 of the Constitution at the instance of defendants 1 and 2 challenging two orders passed by the learned Munsiff; the first being an order holding that, upon the death of the 2nd plaintiff, the suit, as a whole, will not abate and that the 1st plaintiff can continue the suit; and the second one, challenging an order passed in I.A.No.4/2022 (about which only we are concerned in this contempt case), allowing an application to call for a record from the Judicial First Class Magistrate Court-I, Kottayam. The challenge insofar as the first order is concerned was repelled by this Court as per Annexure-I judgment. As regards the second order, allowing I.A.No.4/2022, this Court found that the objection of the petitioners (defendants 1 and 2) has not been considered. Accordingly, the order in I.A.No.4/2022 was set aside with the following



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direction:

"The learned Munsiff is directed to consider afresh I.A.No.4/2022, after taking into consideration the objection of the petitioners herein, as well. Fresh orders will be passed in the said interlocutory application, in accordance with law, expeditiously."

5. Now, the petitioner (Counsel for defendants 1 and 2) would allege that, considering and passing orders in I.A.No.8/2024 - an application to amend I.A.No.4/2022 - amounts to contempt of court, inasmuch as the learned Munsiff should have necessarily adhered to the confines of Annexure-I judgment, which does not permit the learned Munsiff to consider an application for amendment of I.A.No.4/2022. Consideration of that interlocutory application, allowing the same and consequentially allowing I.A.No.4/2022 all amount to contempt, is the allegation levelled. In this regard, learned counsel for the petitioner places reliance upon a judgment of the Honourable



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Supreme Court in Shivshankara and another v. H.P.Vedavyasa Char [2023 SCC OnLine SC 358] produced as Annexure-VII herein. The petitioner relies on the observations in paragraph no.7 of the judgment to the effect that, the court to which a case is remanded has to comply with the order of remand strictly; and acting contrary to the order of remand is contrary to law. Learned counsel would canvass the specific contention that, if an interlocutory application to amend I.A.No.4/2022 is preferred, the trial court ought to have sought for clarification from this Court in view of Annexure-I judgment; and failure to do so, coupled with the consideration of I.A. No.8/2024 to amend I.A.No.4/2022 amounts to contempt, is the argument advanced.

6. Insofar as respondents 2 to 4 (alleged contemners 2 to 4) are concerned, the contempt is seen alleged in the following manner, in



paragraph 14 of this contempt case:

"14. If the members of the sub-ordinate judiciary and the person like the 1st respondent contravene this principle, with the aid and assistance of advocate like the 2nd respondent colluding with his clients the 2nd and 3rd respondents, the same will again lead to chaos and catastrophe. Like the 1st respondent, respondent Nos.3 to 4 are also clearly liable for contempt, as they have also purposely and knowingly assisted and induced the 1st respondent, to disobey the clear direction of this Hon'ble Court, causing disgrace to this Hon'ble Court. The conduct of Respondent Nos.2 to 4 are cruel character of contempt of court. They have committed the same by themselves and also aided and assisted and induced the 1st respondent to commit contempt of this Hon'ble Court and the Supreme Court of India. Anyhow, their conduct certainly and undoubtedly will amount to clear contempt by themselves. They all knowingly and purposely interfered clearly with the administration of justice and clinchingly obstructed the smooth course of justice by causing obstructions to carry out the clear and specific directions in Annexure I judgment of this Hon'ble Court and Annexure VII judgment of the Apex Court and



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Annexure VIII Office Memorandum issued by the Registry of this Hon'ble Court, following the decision of a Division Bench of this Hon'ble Court. The cruel approach of the respondents in general really undermine the confidants of the general public in the administration of justice and bring judiciary in to disrespect."

(underlined by me for emphasis)

7. Having adverted to the arguments raised by the learned counsel for the petitioner and the pleadings and also the mode and manner in which contempt is sought to be alleged against the alleged contemnors, this Court is of the clear and definite opinion that the instant case is nothing, short of abuse of the process of the court. Section 2(a) defines "contempt of Court" to mean civil contempt or criminal contempt. Section 2(b) defines "civil contempt" thus:

"(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other



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*process of a Court or willful breach
of an undertaking given to a Court."*

In the instant case, there is no allegation of criminal contempt, for which reason, this Court is not referring to the definition of the same.

8. It could be seen from the above definition that, to constitute a civil contempt, there should be a 'willful' disobedience to any judgment, decree, direction, order etc. of a court. It is worthwhile to notice that the only direction contained in Annexure-I judgment was to consider I.A.No.4/2022 afresh, after taking into consideration the objection of defendants 1 and 2 as well and to pass appropriate orders therein. By Annexure-X order, the said direction is seen complied with. The question as to whether defendants 1 and 2 have any grievance in respect of Annexure-X order and whether it suffers from any legal infirmity or not are considerations



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completely outside the scope of this proceeding. A perusal of Annexure-X would reveal that the objections of defendants 1 and 2 have been considered and orders are seen passed in I.A. No.4/2022, wherefore there exists no room for alleging any contempt, whatsoever.

9. This Court will now consider the contempt alleged in considering I.A.No.8/2024 before passing Annexure-X order. Orders passed in I.A. No.8/2024 is produced as Annexure-IX in this proceeding. It is profitable to recall that I.A. No.4/2022 is to call for a report of the Forensic Science Laboratory - which pertains to the creation of a forged Will - from the Judicial First Class Magistrate-I, Kottayam to the Additional Munsiff Court-I, Kottayam, which was in *seizin* of the suit. A perusal of Annexure-IX order would indicate that the Forensic Science report is available in the Chief Judicial



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Magistrate Court, Kottayam; and not before the Judicial First Class Magistrate Court-I, Kottayam. Accordingly, I.A.No.8/2024 seeks to amend I.A. No.4/2022 to call for the record from the Chief Judicial Magistrate Court. The learned Munsiff, in Annexure-IX order, at paragraph no.7, found that, in the initial portion of I.A.No.4/2022, there is a reference that the complaint preferred by the 3rd plaintiff was before the Chief Judicial Magistrate Court, wherefore, it was found that the reference to Judicial First Class Magistrate-I, Kottayam is nothing, but a mistake. On such premise, I.A. No.8/2024 was allowed permitting amendment of the court from which, the record is to be called for, thereby incorporating the name of the correct court, namely the C.J.M, Kottayam.

10. There cannot be any contempt, whatsoever, in considering I.A.No.8/2024, which only enabled the



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court to consider I.A.No.4/2022, as directed in Annexure-I judgment. On the argument based on remand relying upon Shivshankara (supra), it has to be held that the dictum laid down therein has no applicability to the present facts. Shivshankara (supra) deals with a remand under Order XLI, Rule 23 of the Code of Civil Procedure, whereas we are concerned herein with a direction to reconsider an interlocutory application, when the original suit itself is pending. Inasmuch as, the matter is at large before the trial court, the trial court is bound to consider all interlocutory applications, which precisely has been done by the learned Munsiff in considering I.A.No.8/2024 and I.A.No.4/2022. Assuming for the argument sake that Annexure-IX order passed in I.A.No.8/2024 is either contrary to the dictum laid down in Shivshankara (supra) or otherwise illegal, this Court fails to understand as to how the same will amount to



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contempt. The inevitable conclusion is that no ground, whatsoever, has been made out *prima facie* to initiate contempt action against the learned Munsiff.

11. Coming to the allegations of contempt against respondents 2 to 4, this Court need only observe that the allegations contained in paragraph no.14 of this Contempt Case (extracted above) are completely baseless, mischievous, frivolous and incapable of constituting any contempt. As indicated earlier, to constitute a civil contempt, there should be willful disobedience to any judgment. Annexure-I judgment was not directed against any of the respondents 2 to 4 (alleged contemners 2 to 4). To hurl allegations of contempt against the lawyer appearing for the plaintiffs, as also, plaintiffs 1 and 3, to say the least, is grossly unbecoming, besides being bereft of any bonafides or merits.



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12. The contempt petition is completely devoid of any merit or substance. There is no *prima facie* case made out, even to issue notice against the alleged contemners. In the circumstances, the contempt petition will stand dismissed *in limine*.

13. Ordinarily, this Court would have stopped here by dismissing the contempt. However, the intention behind this Contempt Case, the mode and manner in which contempt is alleged and the persons against whom it is alleged provides ample room for further dilation of the matter. This Court notice that the petitioner is not an ordinary layman. Instead, he is the counsel appearing for defendants 1 and 2 in the suit. Being a member of the prestigious legal fraternity, the petitioner is expected to conduct himself assuming the onerous responsibility and sublime duty of a lawyer and in a manner befitting to the grace and nobility of the



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profession. However, this Court finds that he has abused his position and his knowledge of law with a frivolous, vexatious and mischievous intent to frighten/discourage the respondents/alleged contemnners herein. The Honourable Supreme Court in S.K.Sarkar (supra), while affording a special status to a contempt motion being made by a responsible member of the legal profession (see paragraph no.19 of the judgment) had in its mind that the members of the legal fraternity will act in a manner befitting to their exalted position in the society, so that such a member of the legal profession would come with an allegation of contempt only in a fully deserving case, especially when it is sought to be made against a judicial officer. Of course, the Honourable Supreme Court did contemplate frivolous complaints of contempt, while interpreting the purpose of Section 15 of the Contempt of Courts Act. Section 15 was interpreted so to prevent



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frivolous complaints, thus safeguarding the valuable time of the High Court and the Supreme Court being wasted. Even while recognising such a possibility, the Honourable Supreme Court afforded a special advantageous position to a contempt being moved by a responsible member of the legal profession. Little would have the Honourable Supreme Court thought of a member of the profession stooping down to the extent, as exhibited in the instant facts. At the cost of repetition, it has to be stated that the petitioner herein is not a party to the *lis*, but only a counsel appearing for defendants 1 and 2 in the suit. He has virtually approached this Court with vexatious allegations, which even his clients did not choose to canvass.

14. Secondly, this Court notice that there is complete lack of bonafides in alleging contempt against the 1st respondent/a judicial officer, as



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also, against other respondents. Can it be believed for a moment that the petitioner, being a lawyer, was misled or misconceived in alleging contempt against the respondents herein? Is he not aware that the order in Annexure-I judgment is complied with, wherefore, no contempt will lie against the learned Munsiff? Is he not aware that not following a precedent cannot amount to contempt? Can we attach any bonafides in the allegation that the learned Munsiff committed contempt in considering I.A.No.8/2024? Was not the learned Munsiff merely performing her bounden duty in doing so? Is not the petitioner aware that a contempt, by any stretch of imagination, would not lie against respondents 2 to 4 herein, for, there was no order or judgment directing them to do something, regard being had to the definition of a civil contempt? Can we attribute any bonafides, whatsoever, - leave alone the merits - in this Contempt Case? Does not the



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overall facts and circumstances taken together suggest a malafide/oblique/sinister motive in moving this Contempt Case?

15. The answers to the above questions are not far to seek and the same would only point fingers against the petitioner and his intent/motive in initiating the present proceeding. This Court is also bound to notice that the petitioner/lawyer is duly represented by another lawyer before this Court, wherefore, the petitioner cannot, by any reckoning, plead ignorance with respect to the afore-referred aspects, especially in making wanton allegations of contempt against a judicial officer. The overall conduct of the petitioner, in my estimation, is nothing, but gross abuse of process of the Court.

16. The above referred facts leave no room for this Court, but to mulct exemplary cost on the



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petitioner in abusing the process of this Court and wasting the time of this Court. Accordingly, this Court directs the petitioner to pay exemplary cost of Rs.1,00,000/- (Rupees One Lakh only) to the Kerala State Legal Services Authority, Ernakulam, within a period of one month from today, the date of pronouncement of this judgment. In doing so, this Court invokes its inherent powers as available to every court of law to pass such orders which the interests of justice warrant. The confines as regards the courses of action in terms of the Contempt of Court Act would apply, only if this Court finds that a contempt would lie, *prima facie*. In cases where there is no contempt at all and where a court of law finds that the contempt petition is mischievous, frivolous and vexatious as found in the instant facts, the Court can certainly invoke its inherent power, besides the power of every High Court under Article 226 of the Constitution,



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to deal with the situation suitably, by mulcting exemplary cost, so as to save abuse of process of court. In fact, it is the duty of every court to nip at the bud such experimental litigations, designed with mischievous object.

17. If the cost as directed is not paid, KELSA will initiate steps to recover the same, treating it as arrears of land revenue. The Registry will forward a copy of this judgment to the Kerala State Legal Services Authority for information, as also, for necessary action.

Sd/-

C.JAYACHANDRAN, JUDGE

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APPENDIX OF CON.CASE(C) 1937/2024PETITIONER'S ANNEXURES:

- ANNEXURE I CERTIFIED COPY OF JUDGEMENT DATED 5-12-2023 PASSED BY THIS HON'BLE COURT IN O.P(C) NO.2492/2023 FILED BY K.R.CHANDRAN AND HIS WIFE RAJEE CHANDRAN.
- ANNEXURE II CERTIFIED COPY OF COPY OF I.A NO.4/2022 DATED 24-11-2022 FILED BY RESPONDENT NOS.2 & 3 HEREIN, IN O.S NO.838/2018 ON THE FILE OF THE ADDL.MUNSIFF'S COURT KOTTAYAM, THROUGH THEIR COUNSEL THE 2ND RESPONDENT HEREIN.
- ANNEXURE III TRUE PHOTOCOPY OF OBJECTION DATED 6-1-2023 FILED BY THE 1ST AND 2ND RESPONDENTS THEREIN AGAINST ANNEXURE-II I.A NO.4/2022.
- ANNEXURE IV TRUE PHOTOCOPY ORDER DATED 1-03-2023 PASSED BY THE 1ST RESPONDENT HEREIN ILLEGALLY INVOKING SUO-MOTU JURISDICTION, ALLOWING I.A NO.4/2022.
- ANNEXURE IV(A) TRUE PHOTOCOPY OF I.A NO.6/2023 WITH AFFIDAVIT DATED 17/03/2023 FILED THROUGH THE PETITIONER BY HIS CLIENTS DEFENDANT NOS.1 AND 2 AND OTHERS THEREIN IN O.S NO.838/2018 IN CONTINUATION TO IA NO.5/2023 WHICH WAS FILED AND HEARD EARLIER.
- ANNEXURE V TRUE PHOTOCOPY OF IA NO.8/2024 DATED 19-2-2024 FILED BY RESPONDENT NOS.3 AND 4 HEREIN IN O.S NO.838/2018 FOR AMENDING I.A NO.4/2022 THROUGH THE 2ND RESPONDENT.
- ANNEXURE VI TRUE PHOTOCOPY OF THE OBJECTION DATED 21-02-2024 FILED BY THE RESPONDENTS IN IA NO.8/2024 AGAINST THE SAME, THROUGH THE PETITIONER.



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- ANNEXURE VII TRUE PHOTOCOPY OF THE JUDGEMENT OF THE SC REPORTED IN 2023 LIVE LAW (SC) 261 STATED IN ANNEXURE-VI OBJECTION.
- ANNEXURE VIII TRUE PHOTOCOPY OF THE OFFICE MEMORANDUM D1-1/616/2023 DATED 24-01-2023 ISSUED BY THE REGISTRY OF THIS HON'BLE COURT.
- ANNEXURE IX CERTIFIED COPY OF ORDER DATED 27-02-2024 PASSED BY THE 1ST RESPONDENT IN ANNEXURE-V IA NO.8/2024 FILED IN O.S NO.838/2018.
- ANNEXURE X CERTIFIED COPY OF ORDER DATED 27-02-2024 PASSED BY THE 1ST RESPONDENT IN IA NO. 4/2022 FILED IN O.S NO.838/2018, WHICH WAS ILLEGALLY SUBSTITUTED BY HER INSTEAD OF ANNEXURE-II ORIGINAL APPLICATION.