

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

Tuesday, the 24th day of September 2024 / 2nd Aswina, 1946
WA NO. 1276 OF 2024(FILING NO.)

WP(C) 18555/2024 OF HIGH COURT OF KERALA, ERNAKULAM

APPELLANT(S)/PETITIONER:

M.K.GOPALAN, AGED 77 YEARS, S/O. LATE VELU, MAYYANKANDIYIL
HOUSE, POOLAKODE AMSOM, VELLANNUR DESOM, CHULLOOR, P.O KOZHIKODE,
PIN - 673601

BY ADV PRAKASH M.P.

RESPONDENT(S)/RESPONDENTS:

1. THE SECRETARY, REC MULTI PURPOSE CO-OPERATIVE SOCIETY LTD., (NIT MULTI PURPOSE CO-OPERATIVE SOCIETY LTD.,) NIT P.O, KOZHIKODE, PIN - 673601.
2. NIT MULTI PURPOSE CO-OPERATIVE SOCIETY LTD, NIT P.O, KOZHIKODE, REPRESENTED BY ITS SECRETARY, PIN - 673601.
3. ASSISTANT REGISTRAR (GENERAL), KOZHIKODE, PIN - 673004.

BY ADV.P.P.JACOB for R1 & R2 (served on)

GOVERNMENT PLEADER (served on)

This Unnumbered Writ appeal (filing No.1276/2024) having come up for orders on 24.09.2024, the court on the same day passed the following:

(p.t.o)

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“CR”

ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ.

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Dated this the 24th day of September, 2024

ORDER

Anil K. Narendran, J.

These writ appeals are filed by the 1st respondent in W.P.(C)Nos.18555 of 2024 and 20797 of 2023, invoking the provisions contained in Section 5 of the Kerala High Court Act, 1958, challenging the common judgment dated 04.06.2024 of the learned Single Judge in those writ petitions and the connected matter, i.e., W.P.(C)No.25628 of 2023. By the common judgment, the learned Single Judge allowed W.P.(C)Nos.20797 of 2023 and 25628 of 2023 and closed W.P.(C)No.18555 of 2024.

2. In the writ appeal with Filing No.1276 of 2024, arising out of the judgment dated 04.06.2024 in W.P.(C)No.18555 of 2024, the defect noted by the Registry is that a copy of the writ petition is not uploaded along with the writ appeal. On that defect noted by the Registry, the learned counsel for the appellant pointed out Rule 159 of the Rules of the High Court of

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Kerala, 1971 and also paragraph 10 of the order of a Division Bench dated 07.08.2024 in unnumbered writ appeal with Filing No.1010 of 2024 and connected matters. The learned counsel pointed out that, when the original records produced in the writ petition are available with the Registry, asking the appellant to produce copies of the same would be nothing but a waste and against the principles of conservation, which each citizen is duty bound under the Constitution of India. Since a copy of the writ petition is not uploaded along with the writ appeal, the Registry has posted the unnumbered writ appeal before the Bench.

3. In the writ appeal with Filing No.1281 of 2024, arising out of the judgment dated 04.06.2024 in W.P.(C)No.20797 of 2023, in addition to the defect of not uploading a copy of the writ petition, the Registry has noted that in the affidavit filed in support of the application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 19 days in filing the writ appeal, the appellant has also sought for interim stay of operation of the judgment of the learned Single Judge. On the above defect noted by the Registry, the learned counsel for the appellant replied that when the affidavit contains the reason for the condonation of delay, stating the reasons to seek an interim

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stay of operation of the impugned judgment will not make the affidavit less effective or illegal. Regarding the non-production of a copy of the writ petition, the learned counsel has stated that calling for records of the writ petition is the function of the appellate court. Registry cannot insist that in all cases, the appellant shall produce copies of all pleadings along with the memorandum of appeal. Further, the pleadings of the writ petition will not include the daily orders issued, which would show how the final verdict is arrived at. By asking the appellant to produce the pleadings would disable the appellate court to find how the learned Single Judge has arrived at the conclusion. Rule 159 of the Rules of the High Court of Kerala, 1971 does not speak about the production of a copy of the writ petition, in a case in which the writ petition is decided after notice. Insisting production of writ petition along with interlocutory applications, while filing writ appeals in the online portal is against the Rules.

4. Heard arguments of the learned counsel for the appellant on the defects noted by the Registry.

5. The learned counsel for the appellant would place reliance on the decision of the Apex Court in **State of Punjab v. Shamlal Murari [(1976) 1 SCC 719]**, wherein it was held that

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procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice; and another decision of the Apex Court in **PIC Departmentals Pvt. Ltd. v. Sreeleathers Pvt. Ltd.** [order dated 30.07.2024 in SLP(C)No.14902 of 2024], wherein it was held that ultimately the procedural technicalities have to give way to substantive justice. The procedure is only the handmaiden of justice. The learned counsel would also place reliance on the decision of a Division Bench of this Court in **Shaji P.R. v. State of Kerala [(2006) 3 KLT 567]**, wherein it was held that the procedure can be prescribed only by statute or rules made thereunder or as authorised by the Constitution, statute or rules.

6. Chapter III of the Rules of the High Court of Kerala, 1971 deals with the form and institution of proceedings. Rule 41 of the said Rules deals with papers to be filed with memoranda of appeals. As per clause (c) of Rule 41, every memorandum of appeal shall be accompanied by duly authenticated copy of the writ petition/original petition, affidavits including counter and reply affidavits and statements, if any, filed in the writ

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petition/original petition and annexures thereto, in the case of writ appeals filed, in which urgent memos are filed along with it or within one month of its institution and writ appeals filed against interim orders in pending writ petitions/original petitions.

7. Chapter XI of the Rules of the High Court of Kerala deals with proceedings under Articles 226, 227 and 228 of the Constitution. Rule 159 deals with appeals from decisions of Single Judges. As per sub-rule (1) of Rule 159, the procedure prescribed for appeals in Order XLI A of the Code of Civil Procedure, 1908, excluding Rule 2 thereof, shall as far as may be, be followed in appeals from decisions of Single Judges in writ matters. As per the first proviso to sub-rule (1) of Rule 159, in writ appeals against judgments dismissing original petitions *in limine* copies produced under sub-rule (3) of Rule 147 shall also be served on the respondents along with the notice of writ appeal. As per the second proviso to sub-rule (1) of Rule 159, no decree needs to be drawn up in writ appeals. As per the third proviso to sub-rule (1) of Rule 159, in an appeal from the decision of a Single Judge dismissing a writ petition *in limine*, the appellant shall produce, on notice being ordered in the writ appeal, as many copies of the writ petition as there are

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respondents in the appeal, forthwith, unless the court otherwise directs.

8. Rule 5 of the Electronic Filing Rules for Courts (Kerala), 2021 deals with the general procedure. As per sub-rule (1) of Rule 5, whenever an e-filer intends to file a pleading the same shall be prepared electronically using any word processing software following the format as mentioned in clauses (a) to (e), which deal with 'paper size', 'font and 'font size', line spacing, 'alignment' and 'margins'. As per sub-rule (2) of Rule 5, a document which is to be typed in the local language of the Court shall be typed using UNICODE Font 12. In view of the provisions under sub-rule (3) of Rule 5, all pleadings and documents filed in the High Court shall be in PDF or PDF/A format. In view of the provisions contained in sub-rule (5) of Rule 5, where the document is not a text document and has to be enclosed along with the pleadings, the e-filer shall ensure that the documents filed are an accurate representation of the document and is complete and readable. When the original of the document is not clearly legible, a typed copy of the document duly certified by the Advocate or Party-in-Person shall also be scanned and uploaded along with the original. In view of the provisions under

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sub-rule (6) of Rule 5, when the document produced along with the pleadings or subsequently is not the original of the document, the Advocate or the Party-in-Person producing the document, shall endorse on the top of the first page of the document, that the document is not the original document and that it is only a certified copy or a photocopy of the original document. Sub-rule (8) of Rule 5 provides that the text document and the scanned documents shall be uploaded in the website of the relevant courts in the manner and method as prescribed by the High Court from time to time. Any electronic filing not made in the manner and method as prescribed by the High Court shall be treated as a defective electronic filing.

9. In **Shankara Narayanan P.A. v. Kerala State Beverages (M and M) Corporation Ltd. [2024 (5) KHC 289]** a Division Bench of this Court, in which one among us [Anil K. Narendran, J.] was a party, issued various directions regarding the documents produced along with the memorandum of writ petitions, writ appeals and original petitions, including O.P.(KAT) and O.P.(CAT). Paragraph 9 of that order reads thus;

“9. Having considered the submissions made at the Bar, in the light of the statutory provisions referred to hereinbefore, we deem it appropriate to issue the following

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directions; (i) The documents produced along with the memorandum of writ petitions, writ appeals and original petitions, including O.P.(KAT) and O.P.(CAT) should be complete and readable. When the document is not clearly legible a typed copy of the document duly certified by the Advocate or party-in-person, as the case may be, has to be produced along with the original.

(ii) When a particular portion or paragraph of the document produced along with the memorandum of writ petitions, writ appeals and original petitions, including O.P.(KAT) and O.P.(CAT), other than the impugned order, is not clearly legible or readable, the Advocate or the party-in-person, as the case may be, has to produce a typed copy of that portion or paragraph, along with the original, for the time being, who shall give an undertaking that a typed copy of that document shall be produced as and when directed by the Court.

(iii) When a particular portion or paragraph of the document produced along with the memorandum of writ petitions, writ appeals and original petitions, including O.P.(KAT) and O.P.(CAT), other than the impugned order, is not clearly legible or readable and the Advocate or party-in-person, as the case may be, is not in a position to provide a typed copy of the same, since it is not readable, and the said portion or paragraph of the document is not required for the adjudication of the lis in the writ appeal or original petitions [O.P.(KAT) and O.P.(CAT)] or the writ petition filed challenging the order of the Armed Forces Tribunal, the Advocate or party-in-person, as the case may be, shall give an undertaking that the said portion or paragraph of the document, which is not clearly legible or

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readable is not required for the adjudication of the lis, which shall not be relied upon. Based on such an undertaking, Registry shall number the matter, subject to the orders to be passed by the concerned Bench on the undertaking so made, after making an endorsement to that effect in the office notes in bold letters and list the matter before the Bench.

(iv) The physical copy of the memorandum of writ petitions, writ appeals and original petitions, including O.P.(KAT) and O.P.(CAT), generated by the e-filing portal shall meet the requirements of clauses (i) to (iii) as above. (v) The Advocates and party-in-person can avail the facilities provided in the e-Seva Kendra, for scanning documents with skew correction, blank page removal, colour balancing and resolution adjustment. They can also avail the built in OCR facilities provided in such scanners.”

10. In paragraph 10 of the order in **Shankara Narayanan P.A. [2024 (5) KHC 289]**, the Division Bench noted certain issues relating to the defects noted by the Registry in respect of the memorandum of writ appeals. By that order, the Registrar (Computerisation)-cum-Director IT was directed to make a proposal before the Computer Committee, in consultation with the Registrar (Judicial), on the feasibility of the procedure stated therein at paragraph 10, in respect of writ appeals. Paragraphs 10 and 11 of that order read thus;

“10. In respect of memorandum of writ appeals, the issue relating to the defects noted by the Registry could be

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avoided, in case the Judges' papers of the writ petition are tagged online to the memorandum of writ appeal, in the case of a writ petition filed in online mode. The first and second sets of the memorandum of writ petition can be tagged by the Registry to the physical copy of the memorandum of writ appeal, in which event the documents which form part of the pleadings in the writ petition need not be scrutinised again by the Filing Scrutiny Officers, and the Advocate or the party-in-person, as the case may be, need not produce such documents along with the writ appeal. However, this procedure cannot be made applicable in the case of a writ appeal filed against any interlocutory orders passed in the writ petition, i.e., a writ appeal filed during the pendency of the writ petition.

11. The Registrar (Computerisation)-cum-Director (IT) to make a proposal before the Computer Committee, in consultation with the Registrar (Judicial), on the feasibility of the procedure stated hereinbefore at paragraph 10 in respect of writ appeals. List these matters as per roster before appropriate Benches on 09.08.2024."

11. The Registrar (Computerisation)-cum-Director IT has reported that, in order to make a feasible proposal of the procedure stated in paragraphs 10 of the aforesaid order, a meeting of the concerned officials in the Filing and Judicial sections is scheduled for 25.09.2024. The matter has already been brought to the notice of the Hon'ble Chairman of the Committee in Charge of Computerisation.

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12. From the report of the Registrar (Computerisation)-cum-Director IT, we notice that the e-filing module for the filing of writ appeals has the capability to tag pleadings from the writ petition as part of the case bundle. This feature applies specifically to pleadings, including the documents submitted by both sides in the writ petition, and judgment. However, the physical order sheet is not available for tagging through the e-filing module. The procedure proposed in the report is that, if the physical order sheet also needs to be tagged, the Section Assistant concerned can manually scan and upload the file through the section upload feature.

13. Having considered the submissions made at the Bar, we deem it appropriate to issue the following directions;

(i) In writ appeals arising out of writ petitions filed online, the pleadings in the writ petition, including the documents submitted by both sides, shall be tagged from the e-filing database to create a consolidated writ petition case bundle, to form part of writ appeal case bundle.

(ii) In writ appeals arising out of writ petitions filed offline, the pleadings in the writ petition, including the documents submitted by both sides, shall be digitized by the Registry within a period of six working days from the date of registration, which shall then be tagged from the e-filing database to create a consolidated writ petition case bundle, to form part of writ appeal case bundle. In case the

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appellant requires such a writ appeal to be moved before the Division Bench immediately or before six working days as aforesaid, a scanned copy of the pleadings in the writ petition, including the documents submitted by both sides, shall be tagged by the appellant to the writ appeal to create a consolidated writ petition case bundle, to form part of writ appeal case bundle.

(iii) If the physical order sheet also needs to be tagged to writ appeal, the Section Assistant concerned shall manually scan and upload the file through the section upload feature.

14. Rule 14 of the Electronic Filing Rules for Courts (Kerala), 2021 deals with hard copies of pleadings and documents electronically filed. As per sub-rule (1) of Rule 14, the Advocates and Party-in-Person can take hard copies of the pleadings and documents filed electronically for their use in the Court. As per sub-rule (2) of Rule 14, the Registry of the Court shall take hard copies of the pleadings and documents meant for the use of the Court or for other official purposes.

15. The Registrar (Computerisation)-cum-Director IT Registry has reported that the issue relating to dispensing with the production of hard copies of pleadings and documents electronically filed is pending before the Committee in Charge of Computerisation. Therefore, at this point, we do not propose to issue any directions on the above aspect.

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16. Insofar as the defect noted by the Registry regarding the affidavit filed in support of the interlocutory application for condonation of delay in the unnumbered writ appeal with Filing No.1281 of 2024 is concerned, we notice that, since the interlocutory application is one filed under Section 5 of the Limitation Act, 1963 for condonation of delay, paragraph 6 of the affidavit which deals with stay of operation of the impugned judgment is unnecessary. It is for the appellant to cure the said defect noted by the Registry appropriately.

Since both the unnumbered writ appeals arise out of writ petitions filed online, the appellant to cure the defect noted by the Registry regarding tagging of pleadings in the writ petition, in terms of the directions contained hereinbefore at paragraph 13. Thereafter, the Registry shall number the writ appeals and list before the Division Bench as per the roster.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
P.G. AJITHKUMAR, JUDGE

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