



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

TUESDAY, THE 16<sup>TH</sup> DAY OF DECEMBER 2025/25TH AGRAHAYANA,

1947

RP NO.1713 OF 2025

AGAINST THE JUDGMENT DATED 28.04.2023 IN WA NO.858 OF 2023

OF HIGH COURT OF KERALA

REVIEW PETITIONER/APPELLANT:

DR.USHA UMESH  
AGED 57 YEARS  
W/O. R.UMESH CHANDRAN, RESIDING AT 9F,  
TRINITY HIGH GROVE, MEC ROAD,  
THRIKKAKARA, KOCHI, PIN - 682024

BY ADVS.  
SRI.ROJO JOSEPH  
SRI.P.C.THOMAS  
SRI.A.SAIN PAUL  
SRI.P.R.SHIBU  
SMT.NAVIA SEBASTIAN  
SRI.P.T.JUDY



RESPONDENTS/RESPONDENTS:

- 1 M/S.ALKARSF APPARELS PVT. LTD  
PALLICHAL P.O, THIRUVANANTHAPURAM,  
REPRESENTED BY ITS MANAGING DIRECTOR,  
MR. SREEJITH SR, PIN - 695020.
- 2 MR.SREEJITH SR  
S/O.SHRI SREEDHARAN NAIR, SREE NILAYAM,  
PUNNAMOODU, PALLICHAL P.O,  
THIRUVANANTHAPURAM, PIN - 695020
- 3 THE KERALA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT  
CORPORATION, KINFRA- HOUSE, TC NO.31/2312,  
SASTHAMANGALAM, THIRUVANANTHAPURAM,  
REPRESENTED BY ITS MANAGING DIRECTOR,  
PIN - 695010

BY ADVS.  
SRI.K.A.SALIL NARAYANAN  
SRI.P.U.SHAILAJAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON  
12.12.2025, THE COURT ON 16.12.2025, DELIVERED THE  
FOLLOWING:



'C.R'

**BECHU KURIAN THOMAS & C. JAYACHANDRAN, JJ.**

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**Review Petition No.1713 of 2025**  
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Dated, this the 16<sup>th</sup> day of December, 2025

**O R D E R**

**C. JAYACHANDRAN, J.**

The Review Petitioner herein is the 1<sup>st</sup> respondent in W.P.(C) No.41651/2022 and the appellant in W.A.No.858/2023. The judgments in the said Writ Petition and Writ Appeal are sought to be reviewed by the instant proceedings, on the allegation of fraud having been perpetrated on the Court by suppression of a material fact.

2. As per the judgment dated 04.04.2023 in the Writ Petition, the 2<sup>nd</sup> respondent therein, KINFRA, was directed to consider the petitioners' claim to execute a lease in favour of the 1<sup>st</sup> petitioner therein. In the Writ Appeal, we



made a minimal modification to the judgment enabling the Review Petitioner herein (1<sup>st</sup> respondent in the Writ Petition) an opportunity of being heard, while considering the petitioners' claim as directed by the learned Single Judge. The fact allegedly suppressed is the existence of an interim Order of status quo in a commercial suit, C.S.No.18/2021, instituted by the Review Petitioner herein *inter alia* for dissolution of partnership, settlement of accounts etc.

3. This Review Petition was moved unaccompanied by an application to condone the delay, on the premise that, where a judgment is vitiated by fraud, the same can be challenged at any point of time, without there being a necessity to condone the delay. However, the Review Petitioner subsequently chose to file C.M.Application No.1/2025 seeking to condone the delay of 878 days.

4. Heard Sri. P.C.Thomas, learned counsel for the Review



Petitioner; Sri. K.A.Salil Narayanan, learned counsel for respondents 1 and 2; and Sri. P.V.Shailajan, learned counsel for the 3<sup>rd</sup> respondent.

5. Having heard the learned counsel for the respective parties, we find no reason, either to condone the delay, or for that matter, to review the judgment in question, for the reasons elaborated here below:

6. The first point - Condonation of delay:-

Learned counsel for the Review Petitioner is right in contending that there is no necessity in law to condone the delay, if the Court finds that the judgment sought to be reviewed is obtained by fraud, by suppressing a material fact. However, for the reasons to be unfurled herebelow while dealing with the second point, we find no suppression of any material fact, much less any fraud, so as to entertain the Review Petition, without condoning the delay.

7. Coming to C.M.Application No.1/2025, the solitary



cause espoused for condonation of delay is an averment in paragraph no.3 of the affidavit that the petitioner could not file the Review Petition within the prescribed period due to various reasons, beyond her control. Needless to say that, the said averment can hardly constitute any sufficient cause to condone a whopping delay of 878 days. The fact that the Review Petitioner was aware of the so called suppression; that she did not choose to rake up that issue while filing the Writ Appeal; that she had attorned and acquiesced to the directions contained in the judgment sought to be reviewed (about which aspects, detailed reference will be made while dealing with the second point) also dissuade us from condoning the delay of 878 days. The C.M.Application will therefore stand dismissed.

8. Though we are not bound to look into the merits of the matter, inasmuch as the delay is not condoned, we deem it proper to consider the allegation of fraud alleged in the Review Petition, for, a finding in that regard in favour of



the Review Petitioner may possibly tilt the balance, rendering the delay inconsequential.

9. The second point - Fraud, by suppression of material fact:-

The impact of fraud, if any, on a judgment or Order has been settled three centuries back, when **Chief Justice Edward Coke** held thus:

*“Fraud avoids all judicial acts, ecclesiastical or temporal”*

10. In *Lazarus Estates Ltd. V. Beasley* [1956 (1) All ER 341], **Lord Denning** observed:

*“No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud.”*

11. On the impact of *res judicata*, vis-a-vis, an allegation of fraud, **de Grey, C.J** stated in *Duchess of Kingstone*, Smith's Leading Cases, 13<sup>th</sup> Edition that, though a judgment would be *res judicata* and not impeachable from



within, it might be impeachable from without. Culling out the legal distinction between a mistake and trickery, it was held that a judgment can be set aside, if the Court was imposed upon or tricked into giving the judgment.

12. To wind up the discussion on the conceptual impact of fraud, we refer to two maxims:

- i) *fraus et jus nunquam cohabitant* - fraud and justice never dwell together.
- ii) *fraus et dolus nemini patrocinari debent* - fraud and deceit ought to benefit none.

13. However, it is pivotal that the suppression of any and every fact will not amount to fraud, rendering the judgment a nullity. It is only the suppression of a material fact - which, if disclosed, would have impacted the outcome/result of the proceedings - that will vitiate the judgment by reason of fraud. The issue had received the consideration of the Hon'ble Supreme Court in *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Others* [(2004) 7 SCC 166].



The following observations in paragraph no.13 of the Judgment are eloquent and extracted here below:

*“As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken.”*

(Underlined, for emphasis)

On the facts of that case, the Hon'ble Supreme Court held that non-disclosure of availing a statutory remedy, while filing a Writ Petition, is not a fact, the suppression of which, could have affected the final disposal of the Writ Petition on merits.

**14.** In *Arunima Baruah v. Union of India and Others* [(2007) 6 SCC 120], the concept is considered in paragraph no.12, extracted here below:

*“It is trite law that so as to enable the court*



*to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”*

15. With this prelude, we will now examine whether there is any suppression of a fact; and if the answer is in the affirmative, whether the fact suppressed is material, so as to vitiate the judgment sought to be reviewed.

16. For a correct understanding and appreciation of the issue, the following facts are required to be stated. Writ Petition, W.P.(C)No.41651/2022, was filed by one M/s.ALKARSF Apparels Pvt. Ltd. and one S.R.Sreejith



(Respondents 1 and 2 herein) against Dr.Usha Umesh (the Review Petitioner herein) and the KINFRA (the 3<sup>rd</sup> respondent herein). The Writ Petition speaks about a proprietary concern, Poojaa Garments, set up by Dr.Usha Umesh; about the lease of 50 cents of land from KINFRA; about a memorandum of understanding between the said Dr.Usha Umesh and one Mr.K.Nirmalan; about a partnership deed between the wife of the said K.Nirmalan; about an alleged suppression by Dr.Usha Umesh while entering into a lease arrangement with KINFRA; about one Premnath being admitted as a partner to Poojaa Garments; about a retirement agreement executed by Dr.Usha Umesh from the partnership firm; about the formation of a Company in the name and style of M/s.Kanyakumari Exports (P) Ltd. and dissolution of the partnership firm; about a tripartite agreement executed between Dr.Usha Umesh (representing Poojaa Garments) and S.R.Sreejith (representing Kanyakumari Exports (P) Ltd) etc., which factual aspects are not of any significance in considering the instant Review Petition. Suffice to note



that the relief sought for in the Writ Petition was for issuance of a writ of mandamus commanding the KINFRA to execute a tripartite agreement, transferring the leasehold property held by Kanyakumari Exports (P) Ltd. in the name of the 1<sup>st</sup> petitioner/ALKARSF Apparels Pvt. Ltd. By the judgment sought to be reviewed, the learned Single Judge directed the KINFRA to consider the petitioners' claim for executing a lease deed in favour of the 1<sup>st</sup> petitioner. The pendency of Civil Suit No.18/2021 before the Commercial Court, Thiruvananthapuram, was very much pleaded in the Writ Petition and taking stock of the same, the learned Single Judge held that the decision to be taken by the 2<sup>nd</sup> respondent, on the question of execution of lease in favour of the 1<sup>st</sup> petitioner/ALKARSF Apparels Pvt. Ltd. will be subject to the result of the said suit. For the purpose of review, suppression is alleged by Dr.Usha Umesh, the Review Petitioner herein, in the context of the observation made by the learned Single Judge that the Commercial Court has not passed any interim Order interdicting '*any such*



*action'*, thereby meaning the consideration of execution of lease as claimed by the 1<sup>st</sup> petitioner. This observation was made on the basis of the submissions made at the Bar. The Review Petitioner, Dr.Usha Umesh, chose to remain ex parte in the Writ Petition, and therefore, according to the Review Petitioner, the said submission was made at the Bar by the Counsel for the 1<sup>st</sup> petitioner/ALKARSF Apparels Pvt. Ltd. and the Counsel for KINFRA, based on their instructions. It is the definite case of the Review Petitioner that there was, in fact, an Order of status quo passed by the Commercial Court, which was deliberately suppressed by the petitioners and the 2<sup>nd</sup> respondent before the Writ Court, thereby playing fraud upon the Court and thus, vitiating the judgment in the above Writ Petition.

**17. Whether there is any suppression as alleged:-**

It is profitable to refer to the following list of dates.

Sl.No.	Date	Event
1	30.01.2021	C.S. No.18/2021 was instituted.



2	31.03.2022	Sri.S.R.Sreejith, the second plaintiff in C.S.No.18/2021 withdrew from the suit as per Orders passed in I.A No.7/2021.
3	26.08.2022	The status quo Order was passed.
4	10.12.2022	W.P.(C) No.41651/2022 was filed.
5	07.11.2024	S.R. Sreejith impleaded as 10 <sup>th</sup> defendant in the suit.
6	04.04.2023	Judgment was rendered in W.P.(C)No.41651 of 2022.

We notice that W.P.(C) No.41651/2022 is filed by ALKARSF Apparels Pvt. Ltd., represented by its Managing Director, S.R.Sreejith as the 1<sup>st</sup> petitioner; and S.R.Sreejith, in his individual capacity, as the 2<sup>nd</sup> petitioner. However, ALKARSF Apparels Pvt. Ltd. is not a party to the commercial suit, C.S. No.18/2021. Insofar as S.R.Sreejith is concerned, he was originally the 2<sup>nd</sup> plaintiff in that commercial suit, along with Dr.Usha Umesh. However, on an application filed by S.R.Srejith, vide I.A. No.7/2021, he was removed from the array of plaintiffs, with the result, Dr.Usha Umesh became the sole plaintiff. Now, it is relevant to note that



the suit, C.S. No.18/2021, was instituted on 30.01.2021. Sri. S.R.Sreejith, the original 2<sup>nd</sup> plaintiff withdrew from the suit as per Orders passed in I.A No.7/2021 dated 31.03.2022. However, the relevant Order of status quo - which is alleged to have been suppressed - was passed only on 26.08.2022.

18. It is therefore seriously at doubt whether Sri. S.R.Sreejith was aware of the issuance of the status quo Order. The Writ Petition was filed on 10.12.2022, whereas the said Sreejith got subsequently impleaded in the suit, C.S. No.18/2021, as the 10<sup>th</sup> defendant only on 07.11.2024. The judgment in W.P.(C) No.41651/2022 was rendered on 04.04.2023. It could thus be seen that Sri.S.R.Sreejith was not a party to the suit, C.S. No.18/2021, at the time when the Commercial Court passed the Order of status quo and he got himself impleaded as the 10<sup>th</sup> defendant, much after the judgment was rendered by the learned Single Judge in the above Writ Petition. It



is settled that unless the person, against whom suppression is alleged, was aware of the so-called suppressed fact, no imputation can be made against him.

**19. Whether the fact alleged to have been suppressed is material or not?**

The Order in C.S. No.18/2021 - allegedly suppressed by the petitioners - is produced at Annexure-A1 along with the Review Petition, which only directed the parties to maintain the status quo as on the date of instituting the suit. To understand the scope of the suit and ambit of the status quo Order, one should necessarily refer to the pleadings in the interim application, in which the Order of status quo has been passed. The said Interlocutory Application is produced at Annexure-A2. The prayer sought for in Annexure-A2 is extracted here below:

*“For the reasons set forth in the accompanying affidavit it is humbly prayed that his Hon'ble court be pleased to pass an order of interim injunction restraining and prohibiting the defendants 2 to 5 and 9 from intercepting the plaintiffs from entering the*



*factory buildings of Poojaa Garments situated in plot No:16-A and plot No.17-A of KINFRA International Apparel Park in Survey No.311/1 of Menamkulam Village and from resuming the business of manufacture of readymade garments and from doing anything detrimental to the interest and peaceful possession of the plaintiffs over the plaint 'A' and 'B' schedule properties till the final disposal of this suit."*

20. As could be seen from paragraph no.1 of Annexure-A2, the suit instituted by Dr.Usha Umesh was one for declaration, dissolution of partnership, settlement of accounts etc. The allegations constituting apprehension against the 2<sup>nd</sup> defendant/K.Nirmalan is contained in paragraph no.14 of Annexure-A2, which is also extracted here below:

*"14) As I being the exclusive owner of the factory building and the machineries installed therein and I am the Managing Director and the 2<sup>nd</sup> plaintiff is the partner, we have got every right to do the business of manufacture of readymade garments in the factory buildings. Even though the 2<sup>nd</sup> defendant is on his hideout, if I start the business he will interfere and intercept me to do the business in the factory buildings of the Poojaa Garments with his muscle power and money power."*



Of course, reliefs are sought for against defendants 2 to 5 and 9, of which, the 9<sup>th</sup> defendant is the Chief Executive Officer of KINFRA.

21. It could be seen from the above that an injunction was sought for vide Annexure-A2 I.A. apprehending mischief at the hands of the 2<sup>nd</sup> defendant by interfering with the business of the Review Petitioner/plaintiff. It is relevant to note that the question of execution of a lease deed by KINFRA in favour of ALKARSF Apparels Pvt. Ltd. was not the subject matter of the commercial suit. Therefore, Annexure-A1 Order of status quo is of little relevance, insofar as the issues, which were agitated in W.P.(C) No.41651/2022 are concerned. In other words, the judgment in the said Writ Petition - now sought to be reviewed - would not have undergone any change in its outcome, had Annexure-A1 status quo Order been produced before the High Court. It is true that in the judgment sought to be reviewed, learned Single Judge took stock of the existence



of the commercial suit and that, no interim Order has been granted therein. The following observation of the learned Single Judge is relevant and extracted here below:

*“...I also make it clear that the direction as above is issued since it is submitted at the Bar that there is no interim order passed by any civil court interdicting any such action.”*

22. However, we hardly find any misrepresentation or suppression in the submission above referred, inasmuch as ALKARSF Apparels Pvt. Ltd. was not a party to the commercial suit and Sri. S.R.Sreejith was neither a plaintiff, nor a defendant at the time, when Annexure-A1 status quo Order was passed. It is after Sri. S.R.Sreejith got himself removed from the array of plaintiffs and before seeking impleadment as the 10<sup>th</sup> defendant, Annexure-A1 status quo Order was passed. His impleadment as the 10<sup>th</sup> defendant was even after the disposal of the Writ Petition. Thus, apart from the fact that there is no suppression, this Court is of the opinion that the suppression is not in respect of a material fact, which



could have influenced the outcome/result of W.P.(C) No.41651/2022. Point found accordingly.

23. Absence of bonafides on the part of the Review Petitioner:-

The most important factor, which persuades us to dismiss the instant Review Petition is that the Review Petitioner carried an appeal against the judgment of the learned Single Judge, as W.A. No.858/2023. In this regard, it is relevant to point out that the Review Petitioner remained *ex parte* in W.P.(C) No.41651/2022, despite she being served with notice by special messenger. It is curious to note that no contention based on the so-called suppression of a material fact is seen canvassed in the Writ Appeal. Instead, the suppression alleged in Ground-E of the Writ Appeal is the dismissal of I.A.No.11/2022, seeking disposal of the suit by a summary judgment in terms of Section 16 of the Commercial Courts Act, read with Order XIII A of the Code of Civil Procedure. It is this Order, which is



allegedly not brought to the notice of the learned Single Judge, while disposing the Writ Petition. There is no whisper, whatsoever, about Annexure-A1 status quo Order. If that be so, it is too late at the moment for the Review Petitioner to urge suppression of a material fact, which the Review Petitioner, herself, failed to point out at the writ appellate stage. At any rate, the Review Petitioner cannot claim that she was not aware of Annexure-A1 status quo Order, she being the plaintiff in the suit C.S. No.18/2021. Profitable reference in this regard can be made in *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay* [1995 Suppl. (3) SCC 462], wherein the Hon'ble Supreme Court held that, where facts are known to both the parties, the omission by one does not render it suppression. The above legal position was reiterated in *Anand Nishikawa Company Limited v. Commissioner of Central Excise, Meerut* - [AIR 2005 SC 3660]; *Uniworth Textiles Limited v. Commissioner of Central Excise, Raipur* [(2013) 9 SCC 753]. Absence of *bonafides* is writ large and the Review



Petition is liable to be dismissed on this count, as well.

**24. An Afterthought:-**

The learned Single Judge, by the judgment sought to be reviewed, only directed consideration of the claim of the petitioners therein for executing a lease in favour of the 1<sup>st</sup> petitioner/ALKARSF Apparels Pvt. Ltd. It was made clear in the judgment that the decision to be taken by KINFRA will be subject to the result of the commercial suit, C.S. No.18/2021. In the Writ Appeal, a minimal modification was made by the Division Bench, affording an opportunity of hearing to the appellant (Review Petitioner herein), while a decision was to be taken by KINFRA, as directed by the learned Single Judge. Thereafter, the Review Petitioner, accompanied by her lawyer, participated in the hearing conducted by the Managing Director of KINFRA, in which proceeding, Annexure-R1 A Order dated 23.05.2023 has been passed against the Review Petitioner. It is thereafter only the Review Petitioner chose to seek a review of the



judgment dated 04.04.2023, with a delay of 878 days, alleging fraud. We are of the opinion that the same is nothing, but an afterthought, with an eye fixed on resurrecting the claims of the Review Petitioner, that too, upon realising that Annexure-R1 A Order has been rendered against her.

We find no merits in the instant Review Petition. Accordingly, C.M.Application No.1/2025 will stand dismissed, and consequently, the Review Petition will follow suit.

Sd/-

**BECHU KURIAN THOMAS, JUDGE**

Sd/-

**C. JAYACHANDRAN, JUDGE**



APPENDIX OF RP NO. 1713 OF 2025

PETITIONER ANNEXURES

- ANNEXURE-A1 TRUE COPY OF THE INTERIM ORDER DATED 26/08/2022, PASSED IN EXT-P11 CS NO.18/2021, DIRECTING TO MAINTENANCE OF STATUS QUO ANTE FROM THE DATE OF INSTITUTION OF THE SUIT, I.E., 30.01.2021.
- ANNEXURE-A2 TRUE COPY OF THE JOINT IA NO3./21 IN CS NO.18/21 DATED 30/01/2021 FOR INJUNCTION.
- ANNEXURE-A3 TRUE COPY OF THE COUNTER AFFIDAVIT DATED 03/03/2021 FILED BY MR.NIRMALAN IN THE JOINT IA NO.3/21 IN C.S.NO. 18/2021.
- ANNEXURE-A4 TRUE COPY OF THE ORDER DATED 23/07/2022 DISMISSING I.A.NO.11/22 IN CS NO.18/21.
- ANNEXURE-A5 TRUE COPY OF THE SAID ORDER DATED 23/05/2023 PASSED BY KINFRA IN FAVOUR OF THE 1ST RESPONDENT, MR. SREEJITH.
- ANNEXURE-A6 TRUE COPY OF THE I.A. NO.22/2025 IN CS NO.18/21 DATED 25.02.2025 FILED DR. USHA (THE REVIEW PETITIONER) FILED FOR PROSECUTION.

RESPONDENTS' ANNEXURES

- ANNEXURE-R1 A ORDER PASSED BY THE MANAGING DIRECTOR, KINFRA DATED 23.05.2023 PURSUANT TO THE DIRECTIONS IN THE WRIT APPEAL.



**ANNEXURE-R1 B** COPY OF SURRENDER DEED OF LEASE EXECUTED BY THE REVIEW PETITIONER ON 19.11.2025 AND REGISTERED IN THE OFFICE OF THE SUB REGISTRAR, KAZHAKOOTTAM ON 27.11.2025.

**ANNEXURE-R1 C** A CHART OF ALL MAJOR DATES OF EVENTS.