

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

CRP.No. 261 of 2013 ()

**AGAINST THE ORDER/JUDGMENT IN I.A.NO.606 OF 2009 IN OP(ELE) NO. 41/2009 of
ADDL.DISTRICT COURT, THODUPUZHA DATED 25-01-2013**

REVISION PETITIONER/RESPONDENT:

**THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VAIDHYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM. PIN-695 004.**

BY ADV. SRI.T.R.RAJAN,SC,K.S.E.B.

RESPONDENT/PETITIONER:

**BOBBY,
S/O.KURIAN, KALAPPURAKKAL, ARAKKULAM,
REPRESENTED BY POWER ATTORNEY HOLDER: KURIAN,
S/O.JOSEPH, KALAPPURAKKAL, ARAKKULAM,
THODUPUZHA TALUK.685 591.**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
26-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

DG

THOTTATHIL B.RADHAKRISHNAN, J.

C.R.P.No.261 of 2013

Dated this the 26th day of November, 2015

ORDER

This revision under Section 115 of the Code of Civil Procedure is by the Kerala State Electricity Board, for short the 'KSEB'. It challenges an order by which the court below condoned the delay in filing an application for enhancement of compensation for damages allegedly caused owing to cutting of trees and also for the diminution in the value of property as a result of drawal of overhead electric lines. The challenge is on the ground that the reasons stated in the application seeking condonation of delay ought not to have been accepted. Heard the learned counsel for the revision petitioner and the learned counsel appearing for the respondent.

2. Perusing the impugned order, it can be seen that the court below adverted to and considered the application for condonation of delay on the basis of the affidavit filed in support of that application as also the objection filed on behalf of the KSEB. After assimilating the facts, the court below

allowed the application seeking condonation of delay by imposing costs of Rs.5,000/- (Rupees five thousand only).

3. In **State of Kerala v. Syamala Thamburatti [1980 KLT 34 (F.B.)]**, it was held, among other things, that Sections 4 to 24 of the Limitation Act would apply to the extent to which those provisions have not been expressly excluded by any special law. Following the ratio of that precedent, this Court held in **Raghavan Nair v. K.S.E.B [1989 (2) KLT 825]** that Section 5 of the Limitation Act will apply to an application under Section 16(3) of the Indian Telegraph Act, 1895. The matter in hand arises from an application under that provision read with the relevant laws relating to distribution of electricity.

4. Consideration and order on an application under Section 5 of the Limitation Act is essentially discretionary. Having noticed that the application for condonation of delay has been allowed on terms which are just and reasonable, I do not see any ground to hold that the court below had failed to exercise the jurisdiction vested in it or had acted illegally or with material

irregularity in the exercise of its jurisdiction. No ground for the interference through this revision under Section 115 of the Code of Civil Procedure is hence demonstrated. This revision fails.

In the result, this revision is dismissed. No costs.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

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P.A TO JUDGE

DG