

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

CRP.No. 464 of 2013 ()

AGAINST THE JUDGMENT IN CMA 11/2012 OF DISTRICT COURT,
KOZHIKODE DATED 14-02-2013

AGAINST THE ORDER IN IA 4284/2010 IN OS 466/2007 OF
PRINCIPAL MUNSIF COURT-II, KOZHIKODE DATED 7.4.2011

REVISION PETITIONER(S)/APPELLANT/DEFENDANT:

K.T.RABIA,
D/O.KUNJALAVI, KOLLARANKANDY
KAKKATTUPURA
FEROKE P.O., KOZHIKODE.

BY ADV. SRI.S.MANU

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

K.ABDUL RAHIMAN
S/O.KODAKKATTAKATHU POKKU, ANGADIPARAMBU
THANIYANGATTY HOUSE, PALLIKKAL P.O., MALAPPURAM
PIN - 673 634.

R,R BY ADV. SRI.R.SUDHISH
R,R BY ADV. SMT.M.MANJU
R,R BY ADV. SRI.K.R.RANJITH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P.No.464 of 2013

Dated this the 9th day of June, 2015

ORDER

The revision petitioner was the wife of Mohammed Ismail, the brother of the respondent. It is stated that six children were born in the wedlock of the petitioner and Mohammed Ismail. They were residing in the house in the plaint schedule property, which was a co-ownership property belonging to the husband of the petitioner and other legal heirs of his father. It would appear that the husband of the petitioner executed a document transferring his right in the property to the respondent. It is submitted that all other legal heirs of the father of the respondent assigned their rights in favour of the respondent. The respondent filed O.S.No.466 of 2007, on the

file of the court of the Principal Munsiff-II, Kozhikode, against the revision petitioner for eviction. An ex-parte decree was passed in that suit. The revision petitioner filed I.A.No.4285 of 2010 to set aside the ex-parte decree. There was a delay of 70 days in filing the application and to condone the delay, the revision petitioner filed I.A.No.4284 of 2010. The trial court dismissed the application for condonation of delay and consequently dismissed the application to set aside the ex-parte decree.

2. Challenging the order dismissing the application for condonation of delay, the revision petitioner filed C.M.A.No.57 of 2011 on the file of the District Court, Kozhikode. That appeal was filed within time. However, the appellate court dismissed the appeal on 3.9.2011 on the ground that the revision petitioner did not challenge the order in I.A.No.4285

of 2010, the application for setting aside the ex-parte decree. Thereafter, the petitioner filed C.M.A.No.11 of 2012 before the appellate court. By that time, there occurred a delay of 10 months. The revision petitioner filed an application to condone the delay in filing the C.M.Appeal. The appellate court dismissed the application for condonation of delay and consequently dismissed C.M.A.No.11 of 2012 which is under challenge in this revision. It is submitted that there was no separate order dismissing the application for condonation of delay and an application filed by the revision petitioner to get a certified copy of that order was rejected on the ground that there was no such order. The learned counsel for the respondent submitted that the respondent did not get copy of that order. The reason for condonation of delay in filing the C.M.Appeal was that the revision petitioner was undergoing treatment and that she was having acute financial difficulties. The learned

counsel for the revision petitioner submitted that the revision petitioner is having six children and her husband is not looking after her children. In these circumstances, delay occurred in filing the appeal.

3. After having heard the learned counsel appearing for the parties, I am of the view that in the peculiar facts and circumstances of the case, the delay in filing C.M.A.No.11 of 2012 is liable to be condoned. Accordingly, I condone the delay in filing C.M.A.No.11 of 2012 on the file of the District Court, Kozhikode. Since the delay is condoned, C.M.A.No.11 of 2012 requires to be disposed of on the merits. The lower appellate court did not dispose of the appeal on the merits, but dismissed the appeal on the ground of delay.

4. Accordingly, the Civil Revision Petition is allowed

and the delay in filing C.M.A.No.11 of 2012, on the file of the District Court, Kozhikode, is condoned. The order dated 14th February, 2013 passed by the court below dismissing C.M.A.No.11 of 2012 is set aside and the matter is remanded to the court below for fresh disposal of the C.M.Appeal. The court below shall dispose of C.M.Appeal No.11 of 2012 on the merits.

**K.T.SANKARAN
JUDGE**

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