

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

CRP.No. 26 of 2015

**AGAINST THE ORDER R.P.IA.NO.1312/2014 IN OS 218/2004 of III ADDL.SUB COURT,
KOZHIKODE, DATED 23-10-2014**

REVISION PETITIONER(S)/RESPONDENT/ DEFENDANT:

**P.PERAVAN, AGED 62 YEARS,
S/O. APPU @ KORAPPAN
RESIDING AT 'APOOS' MADAVOOR VILLAGE
BALUSSERY DESOM, KOZHIKODE.**

**BY ADVS.SRI.E.G.GORDEN
SRI.S.K.KRISHNAKUMAR
SRI.T.N.SIVADASAN**

RESPONDENT(S)/PETITIONER/ PLAINTIFF:

**P.SUDHEESH, AGED 42 YEARS
S/O RAMAN, RESIDING AT 'SURABHI' RAMANATTUKARA
RAMANTTUKARA VILLAGE, VELIPROM DESOM
KOZHIKODE-673 633.**

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 27-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

P. BHAVADASAN, J.

C.R.P. No. 26 of 2015

Dated this the 27th day of January, 2015.

ORDER

Aggrieved by the order dated 23.10.2014 in I.A. 1312 of 2014 in O.S. No. 218 of 2004 on the file of 3rd Additional Sub Court, Kozhikode, the respondent before the court below has come up in revision before this Court.

2. The petitioner before this Court is the defendant in O.S. 218 of 2004 which is a suit for money. The suit was based on a promissory note, execution of which was denied by the defendant and it is stated that the plaintiff was a total stranger to him and he has no financial transactions with him.

3. The suit was dismissed for default on 16.9.2009 and as per the order in I.A. 3410 of 2009, the suit was restored to file. The suit was again listed on 27.6.2013 and on that day also the plaintiff repeated his

absence. The suit was dismissed for default. I.A. 3293 of 2013 was filed for restoration of the suit and the same was allowed. That was challenged by the petitioner before this Court in C.R.P. 107 of 2014 which was dismissed by order dated 4.2.2014. While dismissing the C.R.P., this Court directed that the suit shall be disposed of on or before 31.3.2014.

4. Presumably in pursuance to the order of this Court, the suit was included in the list on 6.2.2014. On that day also, the plaintiff remained absent and the suit was dismissed for default. The plaintiff filed I.A.1312 of 2014 for restoring the suit on the third occasion.

5. The petition was strongly opposed by the respondent, who is the petitioner before this Court and pointed out that no sufficient cause has been shown and the attempt of the plaintiff is only to protract the proceedings and harass the defendant in the suit. Since the petitioner

before the court below was not able to show sufficient cause, it is prayed that the petition be dismissed.

6. Before the court below, the petitioner therein was examined as P.W.1 and Ext.B1 was marked from the side of the defendant. The court below, after noticing the evidence of P.W.1 felt that an opportunity be given to the plaintiff to have his suit decided on merits. Even though it would appear from the order of the court below that the court below was not impressed by the cause shown in the petition, in the interests of justice, the court below allowed the petition awarding costs of Rs.5,000/- and that amount was deposited.

7. Learned counsel appearing for the petitioner assailed the said order by saying that no sufficient cause has been shown for the non-appearance of the plaintiff on two earlier occasions and the same ploy was adopted again and the suit was restored. In fact, according to the learned

counsel, there is a specific direction from this Court to dispose of the suit on or before a particular date. In spite of that direction, the plaintiff chose to remain absent which shows his recalcitrant attitude. Under these circumstances, it is pointed out that there is no justification in providing another opportunity to the petitioner before the court below, when he had not utilized the earlier two opportunities. Any sympathy or leniency shown is misplaced, so says the counsel. Accordingly, it is prayed that the impugned order may be set aside.

8. Of course, there is considerable force in the submission made by the learned counsel for the petitioner. The suit was dismissed twice for default and on both the occasions, it was restored to file. In fact there is also a direction from this Court to dispose of the suit on or before 31.3.2014. In spite of that direction, the respondent herein chose to remain absent. He had a case that he was laid up.

9. It is seen from the order of the court below that he has filed a petition for removing the suit from the list. From the deposition of P.W.1 which was read out to this Court, it would appear that the doctor was not in the habit of issuing medical certificates. In order to show that the said claim is not true, the respondent before the court below produced Ext.B1 issued by the same doctor who examined the petitioner before the court below.

10. Whatever that be, the court below, after considering the materials before it, found it appropriate to give yet another opportunity to the petitioner to have the suit decided on merits. It is a discretion exercised by the court below in favour of the plaintiff. A sum of Rs.5,000/- was awarded as costs and the same has been deposited.

11. If, on an appreciation of the materials before it, the trial court came to the conclusion that yet another opportunity be given to the plaintiff to have his suit decided

on merits, it could not be said that the order is perverse, illegal or improper. Of course 11 years have elapsed after the laying of the suit.

12. This Court finds no reason to interfere with the impugned order. This Civil Revision Petition is dismissed.

While dismissing this revision petition, it is made clear that the suit shall be disposed of before the summer recess and that in case the suit is decreed, the court below shall take note of the fact that the delay was due to laches on the part of the plaintiff while awarding interest.

sb.

P. BHAVADASAN,
JUDGE