

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

CRP.No. 78 of 2015

**I.A.NO.3235/2014 & IA.NO.3236/2014 IN OS.NO.233/2013 OF IIIRD ADDITIONAL SUB
COURT, KOZHIKODE.**

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REVISION PETITIONER/RESPONDENT/PLAINTIFF:

**KERALA GRAMIN BANK,
KODARANHI BRANCH, KOZHIKODE DISTRICT,
REPRESENTED BY ITS SENIOR MANAGER.**

**BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.BIJU VARGHESE ABRAHAM
SRI.ADARSH KUMAR**

RESPONDENT/PETITIONER/DEFENDANT:

**DENNIS JOSEPH, S/O.JOSEPH,
ERORIKKAL HOUSE, KODARANHI,
KOZHIKODE DISTRICT - 673 573.**

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 06-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

P.BHAVADASAN, J.

C.R.P. No. 78 of 2015

Dated this the 06th day of March, 2015

ORDER

Aggrieved by the order dated 21.11.2014 in I.A.No.3235/2014 and I.A.No.3236/2014 in O.S.No.223/2013, the respondent before the court below comes up in revision.

2. The revision petitioner as plaintiff instituted O.S.No. 223/2013 in which the respondent herein was the defendant. The defendant did not contest the suit and an exparte decree came to be passed. Later on, he filed two applications namely I.A.No.3235/2014 and I.A.No.3236/2014 to set aside the exparte decree and also to condone the delay in filing the petition for setting aside exparte decree. The court below in its wisdom has found that it is only proper that the defendant be given an opportunity to contest the case on merits and also said that any loss caused to the plaintiff can be compensated by awarding cost. Accordingly, petitions were allowed on payment of cost of ₹ 1000/-.

3. The learned counsel appearing for the petitioner before this Court contend that no reason whatsoever has been given for setting aside the exparte decree and it is not a matter of course. Unless sufficient cause is shown, the exparte decree could not have been set aside.

4. The reason given by the petitioner for his absence before the court below is that on the day on which the case is posted and the exparte decree was passed, he was at Banagalore and therefore he could not appear before the court and contest the case. He also pointed out that he has paid nearly ₹ 70,000/- towards the debt. He sought an opportunity to contest the case on merits.

5. The court below found that there were no documents produced by the petitioner before it to show that the claim made by him was true. But it is interesting to note that a sum of ₹ 70,000/- has already been paid towards the debt and feeling that there must be some reason for him to contest the matter on merits, the court below felt that an

opportunity ought to be given to the petitioner before it to contest the suit on merits. Accordingly, delay was condoned and the suit was restored to file.

6. It is true that setting aside the *ex parte* decree is not a matter of course. But it is also well settled that a discretion exercised by the court below, unless it is shown to be perverse or contrary to the materials on record, shall not be interfered by a Superior Court, even if any different view is possible. In the case on hand, the court below has given reason as to why it allowed the petition even though no documents were produced to substantiate the absence of the petitioner before it.

7. This Court finds no irregularity, impropriety or illegality in the order passed by the court below warranting interference under Section 115 of the Code of Civil Procedure, especially, when the court below was of the opinion that any loss caused to the respondent before the court below can be compensated by awarding cost of

₹1,000/-.

This Civil Revision Petition is without any merits and it is accordingly dismissed.

However, the court below may make every endeavour to dispose of the suit as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this order.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge