

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

CRP.No. 105 of 2015 ()

**ORDER DATED 24.1.2005 IN IA NO. 702/2014 AND COMMON ORDER DATED 24.10.2014
IN IA NO. 701/2014 AND 702/2014 IN OS NO. 787/2010 OF PRINCIPAL SUB COURT,
KOLLAM**

PETITIONER/RESPONDENT/PLAINTIFF :

**ANIYAN
S/O.SUGATHAN,
PROPRIETOR, SURYA FINANCIERS
KETTANGASSERIL, ASRAMAM P.O.,
KOLLAM - 691 002.**

**BY ADVS.SRI.S.SANTHOSH KUMAR
SMT. P. LISSY JOSE.**

RESPONDENT/PETITIONER/DEFENDANT :

**DIJU RAMAKRISHNAN
S/O.RAMAKRISHNAN, AMBADY, CARZON NAGAR - 157
KACHERY WARD, KOLLAM WEST VILLAGE,
KOLLAM - 691 003.**

BY ADV. SRI.V.VENUGOPALAN NAIR

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 16-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Mn

B. KEMAL PASHA, J.

.....
C.R.P. No.105 of 2015
.....

Dated this the 16th day of July, 2015

ORDER

Initially, an *exparte* decree was passed in a suit for money. The amount involved is around ₹10 lakhs. The defendant, thereafter, filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 for getting the *exparte* decree set aside, along with an IA under Section 5 of the Limitation Act for getting the delay of 1092 days condoned. The court below has condoned the delay and set aside the *exparte* decree on a cost of ₹10,000/-. It seems that the defendant has remitted the cost before the court below. The said common order is under challenge.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The learned counsel for the petitioner has pointed out that the delay was wilful and the same was not liable to be condoned. It has been pointed out that even though the court below has found that there was proper service of summons, the court below in a casual manner condoned the delay on payment of costs of ₹10,000/-.

4. It seems that another criminal case was also pending against the defendant. In that case also he was absconding. As he was absconding, even steps under Sections 82 and 83 Cr.P.C. had to be taken against him. It was during that period, the summons in the case was allegedly served. It seems that the summons was allegedly served on the adult elder brother of the defendant. It is a fact that there is no personal service. Even though the service of summons can be stated as proper within the meaning of the Code of Civil Procedure, 1908, still it is a fact that the petitioner was absconding in the criminal case. It was by considering all the said aspects, the court below has

condoned the delay and has chosen to set aside the *ex parte* decree. On considering the entire aspects and on hearing either side, this Court is satisfied that the impugned order does not suffer from any illegality, irregularity or impropriety. Matters being so, this CRP is only to be dismissed, and I do so.

5. In the result, this Civil Revision Petition is dismissed. No costs. It is a simple money suit of 2010. The court below is directed 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/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge