

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 4TH DAY OF FEBRUARY 2014/15TH MAGHA, 1935

CRP.No. 750 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN CMA 34/2013 of
THE DISTRICT COURT,TRIVANDRUM DATED 23-09-2013

REVISION PETITIONER(S)/2ND APPELLANT/2ND PETITIONER/2ND DEFENDANT :

ANTONY A.G.PERIA
KUDIYIRUPPUVILAKATHU VEEDU,
THUMBA, MENAMKULAM.

BY ADV. SRI.R.GOPAN

RESPONDENT(S)/RESPONDENTS &
1ST APPELLANT/CR.PETITIONERS/PLAINTIFFS & 1ST DEFENDANT :

1. JOSEPH, PHETO HOUSE,
VALIYAVELI, THIRUVANANTHAPURAM-695 001.
2. JASINTHA , W/O. JOSEPH,
PHETO HOUSE, VALIYAVELI
THIRUVANANTHAPURAM-695 001.
3. AIYARIN ALFONSE , D/O. PATHROS,
KUDIYIRUPPUVILAKATHU VEEDU, THUMBA
MENAMKULAM, PIN-695 001.

R1 & 2 BY ADV. SRI.G.P.SHINOD
R1 & 2 BY ADV. SRI.RAM MOHAN.G.
R1 & 2 BY ADV. SRI.MANU V.
R1 & 2 BY ADV. SRI.GOVIND PADMANABHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
04-02-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. CHITAMBARESH, J

C.R.P. NO. 750 OF 2013

Dated this the 4th day of February, 2014

ORDER

The courts below have concurrently refused to set aside the ex-parte decree in a suit for mandatory as well as prohibitory injunction. The petitioner as well as the third respondent herein were the defendants in the suit filed by respondents 1 and 2. The third respondent had sailed with the petitioner in the court below and hence there is no necessity to await service of notice on her.

2. The fact remains that the petitioner/second defendant was working as a driver in ISRO, Thiruvananthapuram at the material time. The petitioner has a case that he was away at Vishakapattanam in connection with his job on working arrangement. The inability to come to Thiruvananthapuram and contest the suit while working at Vishakapattanam is the reason stated. Every endeavour should be made to dispose of the suit on merits rather than passing a decree ex-parte. This is particularly so since the suit is one for mandatory injunction also

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involving demolition of property. I feel that the defendants in the suit can be afforded an opportunity to contest the suit on merits ofcourse on terms.

3. The impugned orders are set aside and the application filed to set aside the ex-parte decree is allowed. This is subject to the condition that the petitioner pays a sum of ₹5,000/- (Rupees Five thousand only) as costs to the counsel for respondents 1 and 2. The costs shall be paid on or before 28.02.2014 in which event the ex-parte decree will stand set aside. The orders impugned would remain intact if the petitioner commits default in the payment of costs.

4. The court of the 2nd Additional Munsiff of Thiruvananthapuram shall make every endeavour to dispose of O.S. No. 919/2007 on its file within six months in the event of the ex-parte decree being set aside.

The Civil Revision Petition is allowed.

**V. CHITAMBARESH
JUDGE**

ncd