

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

CRP.No. 692 of 2014 ()

AGAINST THE ORDER DATED 1.6.2013 IN I.A.NO.2124/2012 AND IN CMA
NO.24/2012 ON THE FILE OF SUB-COURT, SULTHAN BATHERY

REVISION PETITIONER/PETITIONER/APPELLANT:

THEBRAYIL T.V.KURIAKOSE AGED 53 YEARS
S/O.VARGHESE, RESIDING AT MARAKKAVIL, VELIYAMBAM POST
PULPALLY, NOW MONARKK REXIN SHOP
PULPALLY WAYANAD DISTRICT

BY ADVS.SRI.K.RAKESH ROSHAN
SRI.MANSOOR.B.H.

RESPONDENT/RESPONDENT/RESPONDENT:

K.R.THANKAPPAN NAIR
S/O.RAMAN NAIR, KURAKKATTU HANJIKKAL VEEDU
RESIDING AT KAPPIKUNNU, NADAVAYAL AMSOM
VELIYAMBAM DESOM, PULPALLY, S.BATHERY TALUK 670 721

R. BY ADV. SRI.P.RAMAKRISHNAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
25-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RKC

P.BHAVADASAN, J.

C.M Appln. No.856 of 2014

&

C.R.P.No.692 of 2014

Dated this the 25th day of February, 2015

ORDER

C.M Appln. No.856 of 2014 is an application filed under section 5 of the Limitation Act seeking for condonation of the delay of 458 days in filing the revision petition. It is stated in the affidavit filed in support of the application that a copy of the order was received on 25.9.2014. The claim made is that till 20.9.2014, the petitioner was under the impression that the C.M.A was pending before the Subordinate Judge's Court. Only when the plaintiff took steps to have the ex-parte decree executed that he came to know that an ex-parte decree has been passed against him. It was thereafter that he made immediate steps to have the copy of the order, to take further steps in the matter. It is also pointed out that he suffered from heavy back pain and he was advised to take bedrest. It is pointed out that the delay is not wilful and it occurred under unavoidable

C.M Appln. No.856 of 2014 &
C.R.P.No.692 of 2014

circumstances. The petitioner points out that unless the delay is condoned, it will cause irreparable loss to him.

2. This application is very strongly opposed by the respondent who points out that no sufficient grounds have been made out to condone the delay as well as to set aside the ex-parte decree. Even in the lower appellate court also there was considerable delay in filing the appeal and the court below was therefore perfectly justified in dismissing the delay condonation petition as well as the appeal.

3. True there has been laches on the part of the petitioner. But the fact remains that an ex-parte decree has been passed which involves recovery of possession on the strength of title. That admittedly show that the petitioner is in possession of the property. Even though it could not be said that the petitioner was not diligent but he should be given an opportunity to put forward his defence in the case. This court is not oblivious of the fact that in the suit, he neither entered appearance nor filed a written statement.

4. Considering the fact that the suit is one for declaration of

C.M Appln. No.856 of 2014 &
C.R.P.No.692 of 2014

title and recovery of possession, it is felt that an opportunity ought to be given to the petitioner for contesting the case on merits.

5. However, in the light of the fact that there has been laches on the part of the petitioner the respondent needs to be compensated.

In the result, this delay condonation petition and CRP shall stand allowed on condition that the petitioner pays a sum of ₹10,000/- within two weeks from today to the learned counsel for the respondent before this Court. If the amount is so paid, the suit will stand restored to file and the trial court shall dispose of the suit as expeditiously as possible, at any rate, within a period of six months of the date of restoration of the suit.

sd/-
P.BHAVADASAN,
JUDGE.

rkc.