IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

FAO.No. 141 of 2012 ()

AGAINST THE ORDER IN I.A.3912/2011 IN OS 176/2007 of I ADDL.SUB COURT,TRIVANDRUM DATED 05-01-2012

APPELLANT/PETITIONER/PLAINTIFF:

K.RAJAPPA KAIMAL
GENERAL SECRETARY, SPACE ENGINEERS WELFARE SOCIETY.

BY ADVS.SRI.G.S.REGHUNATH
SRI.K.RAJESH KANNAN
SRI.A.S.SHAMMY RAJ
SRI.P.SHANES

RESPONDENTS/COUNTER PETITIONER/DEFENDANT:

1. V.C.VIJAYAKUMAR
MADHAVASARASS, KANIRAMPARA P.O
THIRUVANANTHAPURAM. 695 030.

2. NEELAKANTAN
MANAGING DIRECTOR
TRANS VISIONS (PRIVATE LIMITED) RAJVIHAR
SASTHAMANGALAM P.O, THIRUVANANTHAPURAM 695 010.

3. V.BABU KUMAR
THOPPIL BUNGLAVE, RAM NAGAR, NARIPPIL LANE
PAPPANAMCODE P.O, THIRUVANANTHAPURAM 695 018.

4. SHEENA RANI
KOMALAM HOUSE, HOUSE NO.12, RAM NAGAR
PAPPANAMCODE P.O, THIRUVANANTHAPURAM 695 018.

RR1 TO 4 BY ADV. SRI.NAGARAJ NARAYANAN
RR1 TO 4 BY ADV. SRI.SAIJO HASSAN
RR1 TO 4 BY ADV. SRI.A.G.GIRISH KUMAR
RR1 TO 4 BY ADV. SRI.BENOJ C AUGUSTIN
RR1 TO 4 BY ADV. SRI.I.J.AUGUSTINE
RR1 TO 4 BY ADV. SRI.SEBIN THOMAS

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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F.A.O.No.141 of 2012

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Dated this the 25th day of May, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order by which the court below refused to set aside the dismissal of the suit on ground of non-payment of costs fixed on an earlier occasion.

2. We have heard the learned counsel for the parties.

3. While it may be true that an order dismissing a suit for non-payment of costs fixed through an earlier order could not have been subject to a further application for restoration, examining both the applications and the orders, we are of the view that ends of justice require that the suit be put to trial. We say that, because the plaintiff has paid an enormous court fee and that the suit was listed for trial. It is not a case where the plaintiff has not prosecuted the case after its institution. Under such circumstances, we are inclined to take a lenient view, however on terms.

In the result, the impugned order is set aside and orders that stand merged with that order would also stand set aside by virtue of this judgment. Resultantly, O.S.No.176 of 2007 of the I

Additional Sub Court, Thiruvananthapuram will stand restored to file on condition that the appellant pays the four respondents @Rs.2,000/- (Rupees two thousand only) per person. Such remittance shall be made by payment to the counsel appearing for the parties before this Court or before the court below or even by deposit before the court below. Memo, receipt of payment or deposit shall be presented before the court below. Such deposits or payments shall be made within a period of four weeks from today. Parties are directed to mark appearance before the court below on July 14, 2015. This appeal is allowed accordingly.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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