

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

FAO.No. 73 of 2015 ()

AGAINST THE ORDER IN I.A. NOS.2724/2013 & 2725/2013 IN AS. NO.46/2010 OF
PRINCIPAL SUB COURT, THALASSERY DATED 18/11/2014.

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APPELLANT/PETITIONER/APPELLANT:

CHERIYA PANOLI HARIDAS, AGED 51 YEARS,
S/O.KUMARAN, MANANDERI AMSOM DESOM,
THALASSERY, KANNUR DISTRICT.

BY ADVS.SRI.SANJAY THAMPI,
SRI.G.SABASTIAN.

RESPONDENT/RESPONDENT/RESPONDENT:

PANOYADA VIJAYAN, AGED 61 YEARS,
S/O.KARAYI, MANANDERI AMSOM, DESOM,
THALASSERY, KANNUR DISTRICT-676 001.

BY ADV. SRI.P.U.SHAILAJAN.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

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F.A.O.No. 73 of 2015.

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Dated this the 13th day of August, 2015.

J U D G M E N T

The common order on I.A.Nos.2724 and 2725 of 2013 in A.S.No.46 of 2010 on the file of the Sub Court, Thalassery, is under challenge in this appeal.

2. The appellant is the plaintiff in O.S.No.116 of 2004 on the file of the Munsiff's Court, Kuthuparamba. The said suit was one for injunction. The suit was dismissed by the trial court. The appellant challenged the decision of the trial court in A.S.No.46 of 2010. The appeal was dismissed for default on 23.5.2013. Thereupon, the appellant filed I.A.No.2725 of 2013 seeking re-admission of the appeal and I.A.No.2724 of 2013 seeking orders to condone the delay of 140 days in filing I.A.No.2725 of 2013. The aforesaid applications were allowed by the appellate court on

18.11.2014 on condition that the appellant shall pay a sum of Rs.2,000/- each to the respondent by way of cost. The appellant did not pay the cost directed to be paid. Consequently, I.A.Nos.2724 and 2725 of 2013 were dismissed on 26.11.2014. The appellant is aggrieved by the dismissal of the aforesaid applications and hence this appeal.

3. It is seen that when the appeal was dismissed for default, the appellant could not afford to engage a private lawyer to file appropriate application for restoration of the appeal. Consequently, he availed the services of the District Legal Services Authority, Thalassery and I.A.Nos.2724 and 2725 of 2013 were filed through the lawyer whose services were extended to the appellant by the District Legal Services Authority. The appellant being a person who was not even able to engage a private lawyer to file an application to restore an appeal which was dismissed for default, the appellate court ought not have imposed a

cost of Rs.4,000/- on him.

In the result, the condition imposed on the appellant while allowing I.A.Nos.2724 and 2725 of 2013 as per order dated 18.11.2011, is vacated and A.S.No.46 of 2010 is restored to file. The parties are directed to appear before the appellate court on 1.10.2015.

The appeal is allowed as above.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.