

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

FAO.No. 105 of 2015

*(Against the order dated 18.3.2015 in I.A.No.2416/14 in O.S.No.37 of 2008 on the file of
the Principal Sub Court, Kottayam)*

APPELLANT/PETITIONER::

CHACKO JOSEPH, S/O.CHACKO, P.W.D.CONTRACTOR, KORATHARA VEEDU,
KURISUMMOOD P.O., PERUNNA, KIZHAKK KARA
CHANGANACHERRY VILLAGE, CHANGANACHERRY TALUK
KOTTAYAM DISTRICT.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENT/COUNTER PETITIONER/PLAINTIFF::

ANTONY PANAMTHOTTAM @ ANTONY P. JOSEPH,
PANAMTHOTTAM VEEDU, ALAPRA KARA, ALAPRA P.O.
MANIMALA VILLAGE, KANJIRAPPALLY TALUK
KOTTAYAM - 686 544.

R1 BY ADV. SRI.T.K.RADHAKRISHNAN
R1 BY ADV. SMT.S.SREEDEVI
R1 BY ADV. SRI.K.J.GLADIS

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 30-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.105 of 2015

Dated this the 30th day of November, 2015

JUDGMENT

Antony Dominic, J.

The defendant in O.S.37/08 on the file of the Principal Sub Court, Kottayam is the appellant. The suit was filed by the respondent for recovery of Rs.2,54,000/- together with interest from the appellant. Along with the suit, an application for attachment also was filed. On receipt of summons, the appellant entered appearance, filed his objection to the application for attachment. Thereafter, he remained absent and finally he was set ex parte and ex parte decree was passed against him on 6.8.2008. The decree holder filed an execution petition. Subsequently, on 28.2.2014 appellant filed I.A.2416/14 seeking to set aside ex parte decree and I.A.2397/14 seeking to condone the delay of 2285 days in filing I.A. to set aside the ex parte decree. By the impugned order the court below dismissed the I.As., which is under challenge before us.

2. We heard the counsel for the appellant and the learned counsel appearing for the respondent.

3. A copy of the affidavit filed in support of I.A.2397/14 was made available to us. In this affidavit, the appellant has admitted that on receipt of summons he entered appearance before the court and filed his objection to the application for appointment of receiver. It is stated that at that time, another case was filed by the Federal Bank against him before the Debt Recovery Tribunal for realisation of their dues. According to him, as a result of the said case, he was under tremendous pressure and due to that he could neither appear before the court nor file his written statement which lead to the ex parte decree that was passed against him. First of all, even if it is assumed that the proceedings initiated by the Federal Bank were pending before the Debt Recovery Tribunal nothing prevented him from contesting the suit. It is also in evidence that during the same time, the appellant was contesting litigations before the courts at places like Kottayam, Alappuzha, Changanacherry, etc. This, therefore, means that the pendency of a proceedings before the Debt Recovery Tribunal did not prevent him from prosecuting the cases against him.

4. In I.A.No.2397/14, the appellant sought condonation of 2285 days delay. The affidavit filed in support of the delay petition does not contain any explanation with respect to this long and inordinate delay. This, therefore, means that there is no explanation for the delay to be condoned and the pendency of proceedings before the Debt Recovery Tribunal was not one which could have been accepted. Therefore, the court below did not commit any illegality in dismissing I.A.2397/14 and consequently I.A.2416/14 also.

Appeal fails and it is dismissed accordingly.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
P.V.ASHA
JUDGE

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