

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

FAO.No. 161 of 2015 ()

ORDER DTD.18.12.2014 IN IA.NOS.4709/13 & 4710/13 IN OS.297/10 OF
1ST ADDL. SUB COURT, KOZHIKODE

APPELLANT(S)/PETITIONERS/DEFENDANTS:

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1. BABU KESAVAN, AGED 41 YEARS
S/O.KESAVAN, "SOUPARNIKA", MYTHRI ROAD
PANNIYANKARA, KOZHIKODE.
 2. P.THANKAN, AGED 41 YEARS
W/O.BABU KESAVAN, "SOUPARNIKA", MYTHRI ROAD
PANNIYANKARA, KOZHIKODE.

BY ADVS.SRI.C.S.DIAS
SRI.K.JOSE KURIAKOSE
SRI.N.K.SUBRAMANIAN
SMT.B.BINDU

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

PRAKASAN, AGED 52 YEARS
S/O.GOVINDAN, KOLLANARAMBATH, VENGARI.P.O.
VENGARI, KOZHIKODE-673 001.

R1 BY ADV. SRI.SRINATH GIRISH

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

C.M.Appln.No.424 of 2015 &
F.A.O.No.161 of 2015

Dated this the 4th day of December, 2015

JUDGMENT

Antony Dominic, J.

1.C.M.Appln.No.424 of 2015 is filed to condone delay of 108 days in filing this appeal. The petition is supported by an affidavit of the appellants and the reasons for the delay is attempted to be explained by a mere statement that the first appellant was bed ridden with illness and was not in a position to travel to Ernakulam and that his wife, the second appellant, was attending him and hence the delay was caused. This petition was opposed by the respondent and a counter affidavit has been filed.

2.When the petition was heard on a previous occasion, finding that this Court was not satisfied with the averments in the affidavit which were totally unsubstantiated and vague, counsel for the appellant sought time and now produced a medical certificate, which states that the first appellant was suffering from lumbar spondylosis and that the doctor advised

that absence from duty for 8 months from 10.12.2014 to 20.7.2015 was absolutely necessary for the restoration of his health.

3. First of all, this certificate is dated 14.2.2015 and if such a certificate was obtained by the appellants, no reason is forthcoming why it was not produced along with the IA which was filed in July, 2015. Secondly, the affidavit only states that certain period of absence from duty was required for the restoration of his health and neither the certificate nor the affidavit say the manner by which the illness could have prevented the appellant from consulting his counsel and filing the appeal in time. All this therefore substantiate the contention of the respondent that the belated appeal is now filed to stall the execution proceedings which has reached a stage of delivery of property in pursuance of the decree for specific performance passed by the trial court.

4. We are not satisfied that the delay has been properly explained. C.M.Appln.No.424 of 2015 is therefore dismissed.

Consequently, the appeal also is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

kkb.

/True copy/

PS to Judge