

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY,THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

FAO.No. 208 of 2015

AGAINST THE ORDER IN I.A.No.268/15 & 269/15 in OS 193/2010 of SUB COURT,
PERUMBAVOOR DATED 19.8.2015

APPELLANT/PETITIONERS/DEFENDANTS:

1. JUBY M.VARGHESE
S/O M.I.VARGHESE
MOROTHIL HOUSE, KARIMUGAL
PUTHENCROUZ P O, KUNNATHUNADU TALUK
2. M.I.VARGHESE,
S/O ITTAN,
MOROTHIL HOUSE, KARIMUGAL
PUTHENCROUZ P O, KUNNATHUNADU TALUK

BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.REMYA MURALI
SRI.LASHISH MOHAN
SMT.TRESHMA

RESPONDENT/PLAINTIFF:

JOSHY C.N.
S/O LATE MADHAVAN,
CHIRAYIL HOUSE, PADINJARUM KARA,
ATHIRAMPUZHA VILLAGE, ETTUMANOOR PO
KOTTAYAM, PIN 686 631.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.208 of 2015

Dated this the 9th day of October, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed against the order passed by the Sub Court, Perumbavoor dismissing I.A.No.268/15 and 269/15 in O.S.193/2010. By the said order, the court below has rejected the applications made by the appellants to set aside the ex parte decree passed against them and to condone the delay of 430 days in filing the said application.

2. We heard the counsel for the appellants and considered the submissions made.

3. Although it is the contention of the appellants that it was on account of the sickness of the first and second appellants that they happened to be absent when the case was called and that the delay has occurred, the contents of the order impugned shows that on an earlier occasion, in similar circumstances, the suit was decreed ex parte on 17.6.2011 and the applications made by the appellants to set aside the said decree was allowed and the suit was restored to file. It was thereafter that the case was taken up for trial on 6.12.2013, when the counsel for the appellants reported no instructions and accordingly the suit was decreed

ex parte on 18.12.13. Even apart from the fact that in regard to the claim that the appellants were sick is concerned, we find that the said claim was also not substantiated by any acceptable evidence, there is also no explanation why their alleged sickness and consequential inability to be present in court were not conveyed to their counsel.

4. In such circumstances, we fully agree with the court below that the appellants did not succeed in establishing any satisfactory explanations to justify the prayers made.

Appeal fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE

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