

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

FAO.No. 235 of 2015 ()

ORDER DTD 19.9.2015 IN IA.NOS.1/14 & 2/14 IN OS.308/08 OF SUB COURT,
NEYYATTINKARA

APPELLANT(S)/PETITIONERS/DEFENDANTS:

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1. CHANDRAMATHI, AGED 58 YEARS
W/O.LATE SUSEELAN, RESIDING AT REVATHY , A -41
KANAKA NAGAR, VELLAYAMBALAM, THIRUVANANTHAPURAM
 2. INDUSREE SUSEELAN, AGED 25 YEARS
D/O.LATE SUSEELAN, RESIDING AT REVATHY , A -41
KANAKA NAGAR, VELLAYAMBALAM, THIRUVANANTHAPURAM
 3. INDIRA SUSEELAN, AGED 22 YEARS
D/O.LATE SUSEELAN, RESIDING AT REVATHY , A- 41
KANAKA NAGAR, VELLAYAMBALAM, THIRUVANANTHAPURAM

BY ADV. SRI.M.DINESH

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

M. JALALUDHEEN, AGED 45 YEARS
S/O.MUHAMMED KUNJU, KADAYARA VILAKOM VEEDU
OPOPOSITE JUMA MASJID, VIZHINJAM ROAD, BALARAMAPURAM
THIRUVANANTHAPURAM - 695008.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.235 of 2015

Dated this the 12th day of November, 2015

JUDGMENT

Antony Dominic, J.

1.This appeal is filed against the common order passed by the Sub Court, Neyyattinkara in IA.Nos.1/14 and 2/14 filed by the appellants in O.S.308/08 to set aside the ex parte decree passed against them and to condone the delay in applying for the same. By the impugned order, the court below dismissed the applications and hence this appeal.

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

3.Reading of the impugned order shows that out of the total delay of 1667 days, according to the court below, even if the case of the appellants is accepted, there is total absence of explanation regarding the delay during the period from 18.11.2013, when they got information about the proceedings to 1.1.2014, when the applications were

submitted. The court below has also found that though the first petitioner has pleaded that her inability to contact her lawyer in time was due to illness, no documents substantiating the same were produced. It is also found that there is no material whatsoever to conclude that appellants 2 and 3, who are majors, were prevented by any reasons from prosecuting the matter in time. These are the reasons stated by the court below to reject the application for condonation of delay.

4. The contention now raised by the counsel for the appellants is that if the appellants were given opportunity to adduce evidence to substantiate their case, they would have produced documents and substantiated their case. However, the appellants did not have a case that they asked for an opportunity to adduce evidence and that the same was turned down by the court below. In fact, the counsel clearly stated that such an opportunity was not sought for. In such a situation, there is no logic in contending that if the appellants were given opportunity to adduce evidence, they would have

produced documents. In such circumstances, we do not find any illegality in the conclusion of the court below in dismissing the applications filed by the appellants.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge