

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

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

FAO.No. 256 of 2015 ()

(AGAINST THE ORDER OF THE SUB COURT, ALAPPUZHA IN
I.A NO.10 OF 2015 IN O.S NO.283 OF 2010 DATED 22.09.2015)

APPELLANTS/APPLICANTS IN I.A.-DEFENDANTS IN SUIT:

1. KAKKAKAYAL NELLU ULPADAKA SAMITHI
REG.NO.1090/90, SOUTH ARYAD, AVALUKUNNU.P.O.
PIN-688 006, REPRESENTED BY SECRETARY
MERSIYAN (WRONGLY SHOWN IN THE ORDERS OF THE
COURT BELOW AS MARCILIN) @ TOMICHAN.

2. KARTHIKEYAN
PRESIDENT, KAKKAKAYAL NELLU ULPADAKA SAMITHI
REG.NO.1090/90, SOUTH ARYAD, AVALUKUNNU.P.O.
PIN-688 006.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI. P.B. SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)

RESPONDENT/RESPONDENT IN I.A.-PLAINTIFF IN SUIT:

K. MADANAN, AGED 66 YEARS
S/O.KRISHNANKUNJU, PILIPARAMBIL HOUSE,
KAITHAVANA,
SANATHANAPURAM.P.O., ALAPPUZHA,
PIN-688 003.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 30-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

F.A.O No.256 of 2015

Dated this the 30th day of November, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the defendants in O.S No.283 of 2010 on the file of the Sub Court, Alappuzha, who are aggrieved by the dismissal of I.A Nos.10 of 2015 and 11 of 2015, by the order dated 22.09.29015.

2. We heard the learned Senior Counsel for the appellant and considered the submissions made.

3. O.S No.283 of 2010 was filed for damages for defamation. The appellants are defendants 1 and 2 in the suit. The suit was decreed exparte on 04.11.2013 allowing the respondent to realise an amount of Rs.3 lakhs with future interest @ 6%. I.A No.10 of 2015 was filed for setting aside the said exparte decree and I.A No.11 of 2015 was filed praying for condoning the delay of 427 days in filing I.A No.10 of 2015. By the order impugned, the court below dismissed I.A No.11 of 2015 and consequently, I.A No.10 of 2015 was also dismissed. It is aggrieved by these orders, that the appeal is filed.

4. Reading of the order impugned shows that, the appellants had appeared in the Suit and did not file any written statement. Due to their absence later, the suit was decreed exparte on 4.11.2013. Subsequently, the decree holder filed E.P No.138 of 2014. In response to notice of service, the appellants appeared before the execution court and were defending the proceedings. It is long thereafter that, they filed I.A No.11 of 2015 along with I.A No.10 of 2015 on 5.1.2015.

5. Election to the Samithi, assumption of new office bearers and implementation of new bye-laws were the reasons stated by the appellants for remaining exparte. The court below found that , apart from the assertions made, the affidavit did not contain any details supporting these assertions. It also found that the appellants, who had initially entered appearance before court, knowingly did not contest the suit. Further, the appellants did not adduce any evidence in the matter also. Therefore, the court below cannot be faulted with for declining the prayer for condonation of delay on the vague statements made by the appellants.

6. Apart from the above facts, we also find that on getting summons, the appellants had entered appearance in the

suit. They did not file any written statement and were set exparte. On an application made by the appellants, the said order was set aside. Again on account of the absence of the appellants, they were set exparte on 1.4.2011, which order was also set aside on their application. This means that the decree passed on 4.11.2013 was in pursuance of the third exparte order passed against the appellants. In other words, they were culpably negligent in prosecuting the case.

For all these reasons, we do not find any justification to interfere with the orders impugned in the appeal. Accordingly the appeal fails and is dismissed.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge