

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN**

WEDNESDAY, THE 27TH DAY OF NOVEMBER 2013/6TH AGRAHAYANA, 1935

Mat.Appeal.No. 247 of 2012 ()

OP.NO.62/2000 OF THE FAMILY COURT, THRISSUR, DATED 14/02/2012

APPELLANT(S)/PETITIONER/3RD RESPONDENT:

**DEVAKY, AGED 71 YEARS,
W/O UNNICHEKKAN @ SANKARAN, PANIKKAPARAMBIL HOUSE,
KOTTEKKAD DESOM, KUTTUR VILLAGE,
THRISSUR TALUK, THRISSUR DISTRICT.**

**BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA**

RESPONDENT(S)/RESPONDENTS/PETITIONER & RESPONDENTS 4 TO 11:

- 1. JEEJA,
D/O KURUMBEPARAMBIL VEETIL BHASKARAN,
PERINGOTTUKARA DESOM, VADAKKUMMURI VILLAGE,
THRISSUR TALUK - 680001.**
- 2. KRISHNAN,
S/O SANKARAN, PANIKKAPARAMBIL HOUSE, KOTTEKKAD DESOM,
KUTTUR VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT 680001.**
- 3. SUMAN DASAN,
W/O DASAN, PANIKKAPARAMBIL HOUSE, KOTTEKKAD DESOM,
KUTTUR VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT 680001.**
- 4. HARSHA, D/O DASAN,
PANIKKAPARAMBIL HOUSE, KOTTEKKAD DESOM, KUTTUR VILLAGE,
THRISSUR TALUK, THRISSUR DISTRICT 680001.**
- 5. HARSHAN,
S/O DASAN, PANIKKAPARAMBIL HOUSE, KOTTEKKAD DESOM
KUTTUR VILLAGE,
THRISSUR TALUK THRISSUR DISTRICT 680001.**

PJ

....2/-

Mat.Appeal.No. 247 of 2012 ()

6. MINOR DARSAN, S/O.DASAN,
PANIKKAPARAMBIL HOUSE, KOTTEKKAD DESOM
KUTTUR VILLAGE,
THRISSUR TALUK THRISSUR DISTRICT 680001.
REPRESENTED BY HIS GUARDIAN MOTHER
3RD RESPONDENT SUMANA DASAN
7. SOBHANA GOVINDAN,
D/O PUTHUKULANGARA SANKARAN,
KOLANGATTUKARA DESOM, THRISSUR 680001.
8. JAYASUNIL,
MANAKKALATH HOUSE,
ATHANI DESOM, THRISSUR DISTRICT 680001.
9. PREETHA,
W/O MOORANI VEETIL MURALI,
MUNDATHIKKOD DESOM AND VILLAGE, THRISSUR 680001.

R1 BY ADV. SRI.BINDU SREEKUMAR

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 27-11-2013,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Despite opportunities granted, steps are not taken to serve notice on
respondents 2,4,5 to 9. In such circumstances, appeal is dismissed for non
prosecution.

27-11-2013

SD/-ANTONY DOMINIC, JUDGE

SD/-P.D.RAJAN, JUDGE

/ TRUE COPY/

P.S. TO JUDGE

PJ

V.K. MOHANAN & P.D. RAJAN, JJ.

Mat.Appeal No. 247 of 2012

Dated this the 5th day of February, 2015

JUDGMENT

P.D. Rajan, J.

This appeal is preferred against the common order in I.A.Nos.5619/2011 and 5620/2011 in O.P.No.62/2000 of Family Court, Thrissur. The above petition was filed by the 1st respondent, who is the daughter-in-law of the appellant, seeking return of gold ornaments or its value, which was decreed ex parte, since the appellant was unable to appear before the Family Court due to her ailment. In the circumstances, she filed I.A.No.5619/2011 to set aside the ex parte decree dated 30.8.2010 and filed another I.A.No.5620/2011 to condone the delay of 327 days in filing

the application to set aside the ex parte decree. The learned Judge of the Family Court considered the averment put forward by the appellant and came to a conclusion that the genuine grounds were not put forward by the appellant to condone the delay. Therefore, the petition for setting aside the ex parte order was also dismissed accordingly. In the circumstances, the appellant approached this Court.

2. The appellant contended that she was aged 71 years at the time of filing the above I.A. and she is suffering from various illness and undergoing treatment. Her son and the husband were died and she is residing alone during the pendency of the proceedings. As she could not contact her counsel, she was unable to know about the decree and therefore, she prays to condone the delay in filing the I.A. to set aside the exparte decree.

3. It is true that the above petition was filed by the daughter-in-law of the appellant for getting her gold ornaments or its value. After the death of her son, the appellant was properly contested the matter by engaging a counsel in the trial Court. Due to her ill-health, she was unable to take instructions from her counsel on 31.7.2010. There was no dispute from the other side about the genuineness of the reason stated by the appellant. When a party is directed to approach before the Court and depose about his/her helplessness in the trial Court, if it feels that the reason is genuine, a lenient view can be taken for condoning the delay and setting aside the ex parte order. Here, the appellant is having more than 71 years and granting an opportunity to contest in the trial Court on merit is reasonable and the words "that he was prevented by any sufficient cause" must be liberally

construed. The gold ornaments given to the 1st respondent at the time of marriage must be proved by the respondents with convincing evidence. That aspect is to be ascertained in the trial Court, for that an opportunity is not given to the appellant to dispute the contentions of the respondents, it will cause irreparable injury to her. Then only the Court can do justice to the parties.

4. Apex Court in G.P. Srivastava v. R.K. Raizada and others [(2000) 3 SCC 54] held as follows:

"7. Under Order 9, Rule 13, C.P.C. an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an ex parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the Court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as

elastic expression for which no hard and fast guidelines can be prescribed. The Courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' for non-appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If 'sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.

5. Considering the argument put forward by the appellant, we are of the view that the delay can be condoned and ex parte order passed against the appellant is set aside, and the suit is restored to its original number provided the appellant pays ₹10,000/- as cost to the opposite party within two weeks. If the appellant fails to

pay the cost within time as directed above, the appeal stand dismissed with cost to the opposite party. The matter is remitted to the trial Court for fresh consideration according to law. Both parties are directed to appear before the Family Court, Thrissur on 26.2.2015.

Mat. Appeal is disposed of as above.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

The figure "₹10,000/-" occurring in the 5th line of paragraph 5 of the judgment dated 05/02/2015 in Mat. Appl.247/2012 is corrected and substituted as "₹1,000/-", vide order dated 06/03/2015 in I.A.863/2015 in Mat.Appl.247/2012.

Sd/-
Registrar (Judicial)

