

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

FAO.No. 290 of 2013

AGAINST THE ORDER/JUDGMENT IN
I.A.No.8530/2011 & I.A.No.8513/2011 IN OS 934/2008 of
FIRST ADDL.SUB COURT, THRISSUR DATED 23-07-2013

APPELLANT/PETITIONER/DEFENDANT:

VASANTHI,
W/O.LATE RAVEENDRAN, EDATHARA HOUSE, PANACHERY VILLAGE,
CHATHAKKULAM DESOM, THRISSUR TALUK.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENT/RESPONDENT/PLAINTIFF:

SHAJI,
S/O.KUNJIKUTTY, AYNIKKAT HOUSE, PATHANJAKAM DESOM,
OLLUKKARA VILLAGE, THRISSUR TALUK-680655.

R1 BY ADV. SMT.P.K.PRIYA
R1 BY ADV. SMT.MONCY FRANCIS
R1 BY ADV. SRI.SURAJ PHILIP JACOB

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

F.A.O.No.290 of 2013

Dated this the 17th day of March, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the defendant in O.S.No.934 of 2008 on the file of the Court of the First Additional Subordinate Judge of Thrissur. The sole respondent is the plaintiff therein. The suit instituted by the respondent on 8.7.2008 for realisation of the sum of ₹2,44,000/- with interest and costs was decreed exparte on 18.6.2009. Long thereafter, to be exact on 1.10.2011, the appellant filed I.A.No.8530 of 2011 to set aside the exparte decree passed in the suit accompanied by I.A.No.8513 of 2011 to condone the delay of 820 days in filing the former application. The respondent/plaintiff opposed the application by filing written objections. The court below considered the rival submissions and dismissed I.A.No.8513 of 2013 by order passed on 23.7.2013. Consequently I.A.No.8530 of 2011 was also dismissed. The appellant has aggrieved thereby filed this appeal. The brief facts of the case are as follows:-

2. The appellant had in the affidavit filed in support of I.A.No.8513 of 2011 averred that she had shifted residence to Peechi and therefore she was not aware of the passing of the exparte decree. She had also averred that, though the suit was posted for written statement, she could not file the written statement in time and that as she could not inform the change in her address to her counsel, the intimations sent by the counsel did not reach her. She has also filed an additional affidavit wherein it was averred that she had shifted residence to Peechi even in June, before she was set exparte, that she had filed a written statement with an application to receive it on 17.6.2009 before she was set exparte and that she came to know about the exparte decree passed in the suit only on 24.9.2011. The respondent had in the objections filed by him contended that, after the exparte decree was passed, he had filed E.P.No.454 of 2009 to execute the exparte decree and upon receipt of notice on the execution petition, the appellant had entered appearance through counsel and therefore, the case set out by the counsel that she was aware of the exparte decree passed in the suit only on 24.9.2011 cannot be believed.

3. It is not in dispute that after the exparte decree passed the respondent/plaintiff had on 18.6.2009 filed E.P.No.454 of 2009 and on receipt of notice therein, the appellant had entered appearance through the very same counsel who represented her in the trial court on 13.11.2009. The application to set aside the exparte decree was filed only on 1.10.2011 nearly two years thereafter. In such circumstances we are in agreement with the court below that the case set out by the appellant that she became aware of the exparte decree only on 24.9.2011 cannot be believed. We therefore find no good grounds to interfere with the impugned order. The appeal fails and it is accordingly dismissed. No costs.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRAN, JUDGE

skj