

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

FAO.No. 21 of 2011 ()

**IA NO. 4441/2006 IN AS 77/2007 of I ADDL.SUB COURT, THIRUVANANTHAPURAM
OS NO. 903/2001 OF IIND ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM**

APPELLANT/PETITIONER/APPELLANT :

**KERALA KHADI & VILLAGE INDUSTRIES BOARD,
REPRESENTED BY ITS SECRETARY, VANCHIYOOR,
THIRUVANANTHAPURAM.**

**BY ADVS. SRI.K.P.HARISH,SC,
SRI.TOM K.THOMAS, SC**

RESPONDENTS/COUNTER PETITIONERS/RESPONDENTS :

- 1. G.VISWAMBHARAN, RESIDING AT SREEVILAS,
PERUMALA, VALLAMANNADI P.O., VENJARAMMOODU
THIRUVANANTHAPURAM**
- 2. THE DEPUTY TAHSILDAR (RR), TALUK OFFICE,
NEDUMANGADU.**
- 3. THE VILLAGE OFFICER, PULLAMPARA, TRIVANDRUM**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE AI: COPY OF THE OFFICE COPY OF THE AFFIDAVIT IN IA NO. 4441 OF 2006 IN AS N. 77 OF 2005.

ANNEXURE A1(a): COPY OF THE OFFICE COPY OF THE PETITION IN IA NO. 4441/2006 IN AS NO. 77 OF 2005.

ANNEXURE AII: CERTIFIED COPY OF THE JUDGMENT DT 16/8/2010 IN WPC NO. 8893/2009 OF THIS HONOURABLE COURT.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.B.SURESH KUMAR, J.

F.A.O.No.21 of 2011

Dated this the 19th day of August, 2015

JUDGMENT

The order on I.A.No.4441 of 2006 in A.S.No.77 of 2005 on the file of the Sub Court, Thiruvananthapuram is under challenge in this appeal.

2. A.S.No.77 of 2005 is an appeal filed by the first defendant in O.S.No. 903 of 2001 on the file of the Munsiff Court, Thiruvananthapuram challenging the decision in the said suit. The appeal was dismissed for default on 18.9.2006. I.A.No.4441 of 2006 is filed by the appellant in the said case for restoring the appeal to file. In the affidavit filed in support of the above application, it is stated that

the appeal was posted for hearing on 18.9.2006 and as the Counsel for the appellant had to attend to another case on the same day before another court, he had instructed his junior to represent the appellant and that the junior of the counsel to whom the matter was entrusted omitted to represent the appellant when the case was called on for hearing. The court below dismissed I.A.No.4441 of 2006, holding that the said reason cannot be accepted as a reason to restore the appeal to file in the light of the provision contained in Rule 2(c) of Order XVII of the Code of Civil Procedure. The appellant in A.S.No.77 of 2005 is aggrieved by the said decision.

3. Heard the learned counsel for the appellant.

4. Order XVII of the Code of Civil Procedure deals with the power of the Court to grant adjournments in suits. True, Rule 2(c) of Order XVII provides that the fact that the pleader of a party is engaged in another court shall not be a ground for adjournment. But the question in this case is not

as to whether the appellant was entitled to get an adjournment in the matter 18.9.2006 on the ground that his counsel was engaged in another court. I.A.No.4441 of 2006 was an application filed by the appellant under Order XL1 Rule 19 of the Code of Civil Procedure seeking orders to readmit an appeal which was dismissed for default. As such, the question that arose before the Court was as to whether the appellant was prevented by sufficient cause from appearing before the court when the appeal was called for hearing. As noticed above, it has categorically stated by the appellant in the affidavit filed in support of I.A.No.4441 of 2006 that his counsel had entrusted the matter to one of his juniors to make a representation on his behalf and it is on account of the omission on the part of the junior of the counsel for the appellant, there was no representation on behalf of the appellant when the case was called for hearing. According to me, the reason stated by the appellant in the affidavit filed in support of the application should have been

accepted by the court below as sufficient cause for not appearing before the court when the case was called for hearing. As such, the impugned order is liable to be set aside.

In the result, the appeal is allowed, the impugned order is set aside, I.A.No.4441 of 2006 in A.S No.77 of 2005 on the file of the Ist Additional Sub court, Thiruvananthapuram is allowed and A.S.No.77 of 2005 is restored to file.

P.B.SURESH KUMAR, JUDGE.

smm