

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

FAO.No. 266 of 2011 ()

AGAINST THE ORDER IN I.A.NOS.703/2010 & 767/2010 IN OS 63/2008 of
PRINCIPAL SUB COURT,KOCHI DATED 18-12-2010

APPELLANT/PETITIONER/PLAINTIFF:

M/S PERIYANAYAKI PROJECT PVT.LTD.
RAGHAVEERA AVENUE 13, CHENNARI-86, REPRESENTED BY
LAND PROCUREMENT MANAGER, NAJEEM AHAMMED, AGED
45 YEARS, S/O, MOIDEEN AHAMMED
RESIDING AT FLAT, NO.8-C, SWAPNIL APARTMENT
KALOOR-KADAVANTHARA ROAD, COCHIN - 17

BY ADV. SRI.G.P.SHINOD

RESPONDENTS/RESPONDENTS/DEFENDANTS:

1. MRS.AISU, W/O ALI, RESIDING AT KASALI-
PARAMBIL HOUSE, MALIPURAM DESOM, ELAMKUNNAPUZHA VILLAGE
KOCHI TALUK, ERNAKULAM-682 511.

2. MR.JAMAL, S/O ALI, RESIDING AT
KASALIPARAMBIL HOUSE, MALIPURAM DESOM
ELAMKUNNAPUZHA VILLAGE, KOCHI TALUK, ERNAKULAM-682 511

3. MRS.UMAIBA, D/O ALI, RESIDING AT
KASALIPARAMBIL HOUSE, MALIPURAM DESOM
ELAMKUNNAPUZHA VILLAGE, KOCHI TALUK, ERNAKULAM-682 511

4. MR.AYUB,S/O ALI, RESIDING AT
KASALIPARAMBIL HOUSE, MALIPURAM DESOM
ELAMKUNNAPUZHA VILLAGE, KOCHI TALUK
ERNAKULAM-682 511.

5. MRS. THAHIRA,
D/O ALI, RESIDING AT KASALIPARAMBIL HOUSE
MALIPURAM DESOM, ELAMKUNNAPUZHA VILLAGE, KOCHI TALUK
ERNAKULAM-682 511.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
25-06-2015 ALONG WITH FAO NOS. 267, 268 OF 2011, 339/2012, 15/2013,
245, 246, 247, 248, 249 OF 2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

**F.A.O. Nos.266, 267, 268 OF 2011,
339 OF 2012, 15 OF 2013,
245, 246, 247, 248, 249 OF 2014**

Dated this the 25th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals have been filed by the common appellant aggrieved by the respective orders passed in various interlocutory applications.

2. The applications have been filed seeking restoration of the suits filed by the appellant. In F.A.O.No.266/2011, the suit is numbered as O.S.No.63/2008, in F.A.O.No.267/2011, the suit is numbered as O.S.No.198/2008, in F.A.O.No.268/2011, the suit is numbered as O.S.No.56/2008, in F.A.O.No.339/2012, the suit is numbered as O.S.No.60/2008, in F.A.O.No.15/2013, the suit is numbered as O.S.No.230/2007, in F.A.O.No.245/2014, the suit is numbered as O.S.No.70/2008, in F.A.O.No.246/2014, the suit is numbered as O.S.No.184/2008, in F.A.O.No.247/2014, the suit is

numbered as O.S.No.3/2008, in F.A.O.No.248/2014, the suit is numbered as O.S.No.177/2008, in F.A.O.No.249/2014, the suit is numbered as O.S.No.185/2008.

3. Since the issue that arises in all the appeals is common, we have taken up the appeals for disposal. We consider F.A.O.No.339/2012 as the leading case and we heard the learned counsel on both sides.

4. The learned counsel for the appellant submitted that the appellant is a Company and the suit O.S.No.60/2008 is one for specific performance of an agreement for sale dated 14.1.2006. The suit was dismissed, but the dismissal was not communicated timely to the appellant. Thereafter I.A.No.2030/2010 for restoration was filed with a petition to condone the delay of 378 days. It stands dismissed by the impugned order.

5. The learned counsel for the respondent submits that there is contumacious conduct on the part of the appellant in not being present before the court below. The learned Judge has rejected the application

stating that no separate evidence has been adduced in support of the application. The learned counsel for the appellant submits that unless the applications are allowed, utmost prejudice will be caused to the appellants.

6. The issue one being the relief sought for specific performance of the agreement, according to us, a decision on merits will be conducive to the interests of justice also. The learned counsel for the respondents submitted that if this Court is inclined to restore the suit, it should be on heavy terms.

7. In the other appeals also, similar applications have been filed (I.A.Nos.703/2010, 1198/2010, 1200/2010, 1068/2010, 1097/2010, 1099/2010, 1101/2010, 1065/2010, 1061/2010 respectively). Having regard to the fact that the suits have been dismissed for default, we are of the view that one more opportunity can be granted to the appellant. Accordingly, we allow the appeals and restore the suits namely O.S.No.63/2008, O.S.No.198/2008, O.S.No.56/2008, O.S.No.60/2008, O.S.No.230/2007, O.S.No.70/2008,

O.S.No.184/2008, O.S.No.3/2008, O.S.No.177/2008,
O.S.No.185/2008 on condition that the appellants will pay ₹5,000/-
each in all the appeals as cost within one month from today and file
memo showing the proof of the same. If the cost is not paid, the
appeals will stand dismissed.

The appeals are accordingly allowed.

Sd/-

T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-

K.P.JYOTHINDRANATH, JUDGE

SV.

The direction in the operative portion of the judgment is modified to
the following extent vide order dated 23.07.2015 in I.A.No.887/2015 in
F.A.O.No.266/2011, I.A.No.891/2015 in F.A.O.No.248/2014 and
I.A.No.886/2015 in F.A.O.No.249/2014 :

“ As far as F.A.O.No.266/2011 (O.S.No.63/08), F.A.O.No.248/2014
(O.S.No.177/08) and F.A.O.No.249/2014 (O.S.No.185/08) are concerned,

this Court permits the appellant in these cases to deposit the amount of ₹5,000/- each in these three cases before the trial court itself for payment to the defendants. A further period of 10 days from 25.7.2015 has been granted to the appellant for making the payment.”

Sd/-
Registrar (Judicial)

The following sentence is added after the common judgment dated 25.6.2015 in FAO 266/2011 and connected cases, vide order dated 23/7/2015 in I.A.893/2015 in FAO 268/2011, I.A.889/2015 in FAO 15/2013, I.A.888/2015 in FAO 245/2014, I.A.892/2015 in FAO 247/2014, I.A.894/2015 in FAO 267/2011 and I.A.890/2015 in FAO 246/2014.

The submission by the learned counsel for the appellants that the amount of cost will be handed over to the learned counsel for the respondents in FAO 268/2011, FAO 15/2013, FAO 245/2014, FAO 247/2014, FAO 267/2011 and FAO 246/2014, for payment to the parties is recorded.

Sd/-
Registrar (Judicial)

Certified that the counsel for the appellants has paid ₹5000/- each (Rupees Five thousand only) as costs to the counsel for the respondents;

in FAO 267/2011 vide memo c.f No.3312/2015 dated 24/07/2015, FAO 268/2011 vide memo c.f.No.3310/2015 dated 24/07/2015, FAO 245/2014 vide memo c.f. No.3309/2015 dated 24/07/2015, FAO 246/2014 vide memo c.f.No.3313/2015 dated 24/07/2015, FAO 247/2014 vide memo c.f. No.3311/2015 dated 24/07/2015 and FAO 15/2013 vide memo c.f.No.3314/2015 dated 24/07/2015 within the time limit specified in the common judgment dated 25/06/2015 in FAO 266/2011 and connected cases. It is also recorded vide order dated 20/08/2015 that the respondent's counsel has already received cost in FAO 339/2012 as ordered in the judgment.

Sd/-
Registrar (Judicial)