

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

FAO.No. 26 of 2010 ()

AGAINST THE ORDER IN I.A.3785/2008 IN OS 489/2006 OF PRINCIPAL SUB COURT,
KOLLAM DATED 21-12-2009

APPELLANT/PETITIONER/PLAINTIFF::

ABDUL SAMAD, S/O.MUHAMMED KUNJU,
AGED 35, KANICHERRY VEEDU, KOZHIKODE WEST MURI
AYANIVELIKULANGARA VILLAGE, KARUNAGAPPALLY TALUK
KOLLAM.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.DIPU JAMES
SRI.ARUN ALEX

RESPONDENTS/RESPONDENTS/RESPONDENTS):

1. K.A.SALIM, KANICHERRY VEEDU,
KOZHIKODU WEST MURI, AYANIVELIKULANGRA, VILLAGE
KARUNAGAPPALLY TALUK, KOLLAM.

2. SHAHINA SALIM, RIYAN MANZIL,
CHANGAMPUZHA NAGAR, KOCHI, ERNAKULAM DISTRICT.

R1-2 BY ADVS. SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

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

F.A.O.No.26 of 2010

Dated this the 26th day of May, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is preferred against the order in I.A.No.3785/2008 in O.S.No.489/2006 on the file of the Principal Sub Judge's Court, Kollam. The short facts are: The appellant is the plaintiff in O.S.489/2006 and a decree of specific performance was sought. The agreement set up is of dated 31.08.2004. The trial court proceeded with the suit and issues were framed. The suit was dismissed for default due to non-appearance of the appellant and an application for restoration was filed that also stands dismissed by the impugned order.

2. Heard both sides.

3. The learned counsel for the appellant prays for one more opportunity to have a decision on merits of the matter. It appears that in the suit the appellant is represented by a power of attorney holder. In the affidavit filed in support of the application for restoration even

though reasons were stated the court below was of the view that the said reasons cannot be believed. The learned counsel for the respondents submits that the reason pointed out that his employer did not grant leave cannot be believed at all. We are of the view that the suit being one filed for enforcing an agreement, the court below ought to have allowed one more opportunity to the appellant. He had paid court fee to the tune of Rs.98,400/-.

4. After hearing learned counsel on both sides, we feel that one more opportunity can be given to the appellant to pursue the suit. Accordingly, this appeal is allowed and the order impugned is set aside and O.S.No.489/2006 is restored to file. The court below will proceed in accordance with law. The parties will appear before the court below on 06.07.2015.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE
Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/