

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

LA.App..No. 542 of 2015 ()

AGAINST THE JUDGMENT IN LAR 72/2008 ON THE FILED OF THE SUB COURT,
VADAKARA DATED 27-06-2009

APPELLANT(S) :

1. PADMAVATHI, W/O.DAMODHARAN AGED 52 YEARS
RESIDING AT VADAKKEYIL HOUSE, PUTHUPPANAM, VADAKARA
KOZHIKODE DISTRICT. REPRESENTED BY POWER OF
ATTORNEY HOLDER V.SHAJI.

2. SHEELA
D/O.DAMODHARAN, RESIDING AT VADAKKEYIL HOUSE
PUTHUPPANAM, VADAKARA
KOZHIKODE DISTRICT. REPRESENTED BY POWER OF ATTORNEY HOLDER
V.SHAJI.

3. V.SHAJI
S/O.DAMODHARAN, RESIDING AT VADAKKEYIL HOUSE
PUTHUPPANAM, VADAKARA, KOZHIKODE DISTRICT.

BY ADVS.SRI.V.S.CHANDRASEKHARAN
SRI.M.V.DAS
SMT.PRINCY XAVIER
SMT.LEKSHMI SWAMINATHAN

RESPONDENT(S) :

1. THE SPECIAL THASILDAR (LA)
NH DIVISION, KOZHIKODE CIVIL STATION - 673 020.

2. THE EXECUTIVE ENGINEER
NH DIVISION KOZHIKODE CIVIL STATION - 673 020.

BY GOVERNMENT PLEADER SMT. P.A. RAZIYA

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 28-
10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

ANIL K. NARENDRAN, JJ.

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C.M. Application No. 567 of 2015

and

L.A.A. No. 542 of 2015

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Dated, this the 28th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal has been preferred against the judgment and decree dated 27.06.2009 in LAR No. 72 of 2008 of the Sub Court, Vadakara.

2. Since there was delay of 1262 days in filing the appeal, the same was sought to be condoned by filing C.M.Appln. But the proceedings were noted as defective and returned to the appellants for curing the defect. The appellants did not take further steps on time to cure the defect and the proceedings were represented only after '800 days' along with C.M.Appln. No. 381 of 2015 to condone the re-presentation delay involved. The only reason stated in the affidavit dated 16.07.2015 filed in support of the application was that because of the renovation of the office of the lawyer and that the file was misplaced. Serious objections were raised from the part of the State by filing counter affidavit dated 01.08.2015. However, considering the fact that lapse, if any, on the part of the lawyer shall

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not cause any prejudice to the litigant, the re-presentation delay was condoned as per order dated 06.10.2015, subject to satisfaction of cost of Rs.500/- to the Kerala High Court Advocates Association within the time stipulated therein.

3. We heard the learned counsel for the appellants as well as the learned Government Pleader with regard to the delay of 1262 days in filing the appeal. The reasons stated in paragraph 3 of the affidavit dated 05.03.2013 filed in support of the petition are as follows :

"3. The learned sub judge passed the judgment on 27.06.2009. Only when I contacted my Advocate in December 2009 I came to know that the court already delivered the judgment on 27.6.2009. I met my counsel at Kozhikkode on 30th August, 2010 and he instructed me to meet my counsel at Ernakulam for filing appeal. When I contacted my advocate at Ernakulam he instructed that the certified copy of the judgment and decree is necessary for filing the appeal. Therefore I applied for the certified copy on 28.10.2009 and received the same on 25.11.09. But I had become seriously ill due to Arthritis and was not able to travel to Ernakulam to give instructions to my counsel. I could only come today as I had some financial liabilities. Hence there caused a delay of 1262 days in filing the

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appeal. So there is no willful negligence or laches on part of the petitioner/appellant for filing the appeal within the statutory period. I contacted my counsel at Ernakulam and I am filing a petition herewith to condone the delay in filing the appeal. That may be allowed in the interest of justice. Otherwise it will cause irreparable damage and loss to me.

All facts stated above are true and correct to the best of my knowledge and belief."

From the above, it is very much obvious that the appellants were simply taking rest on an arm chair for nearly four years. So called reason offered from the part of the appellants is not liable to be considered as proper reason; much less anything satisfactory. This Court does not find any tenable ground to condone the delay. In the said circumstances, C.M.Application stands dismissed and as a natural consequence, the appeal as well.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**ANIL K. NARENDRA,
JUDGE**

kmd

/True copy/

P.A. to Judge