

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

FAO.No. 221 of 2014 ()

AGAINST THE ORDER DATED 5.12.2013 IN IA.302/13 IN OS 727/2008 of
PRL.SUB COURT,KOTTAYAM

APPELLANT(S)/PETITIONER-2ND DEFENDANT:

P.A.DEVASIA,
S/O P.D ANTONY, PARTHANAL VETTEL, PULIYANNOOR P.O
MEENACHIL TALUK, KOTTAYAM DISTRICT

BY ADV. SRI.P.C.HARIDAS

RESPONDENT(S)/RESPONDENT- PLAINTIFF:

STATE BANK OF TRAVANCORE,
HEAD OFFICE, THIRUVANANTHAPURAM
REPRESENTED BY BRANCH MANAGER
STATE BANK OF TRAVANCORE, C.M.S COLLEGE BRANCH
KOTTAYAM 686001

R1 BY ADV. SRI.SATHISH NINAN
R1 BY ADV. SRI.SANTHOSH MATHEW
R BY SRI.K.S.DILIP

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.221 of 2014

Dated this the 30th day of October, 2015

JUDGMENT

Antony Dominic, J.

1.Second defendant in OS.727/08 on the file of the Principal Sub Court, Kottayam is the appellant. The suit was filed by the respondent bank for recovery of money. The appellant being second defendant had entered appearance through counsel. However, written statement was not filed. He and the other defendants were finally set ex parte and a decree against them was passed on 21.11.2009. Long after the execution proceedings were initiated, on 25.1.2013, the appellant filed I.A.Nos.302/13 and 303/13 seeking to set aside the ex parte decree and to condone delay of 1129 days in applying for the same. These IAs were dismissed by the impugned common order. It is challenging this order, the appeal is filed.

2.We heard the counsel for the appellant and the learned counsel appearing for the respondent bank.

3.According to the counsel for the appellant, after entrusting the matter with an advocate, the appellant

had left for Cumbum in Tamil Nadu and was employed in an estate there. It is stated that while so, he was inflicted with Jaundice and was laid up for a considerably long time. According to the counsel, appellant came to know about the decree passed against him only on 22.11.2012 and that thereafter, in January, 2013, he came to Kerala, made enquiries and after gathering the details, filed the IAs in question on 25.1.2013. It is stated that the delay of 1129 days was occurred in the above circumstances which were totally beyond the control of the appellant and therefore, the court below ought to have condoned the delay and set aside the ex parte decree passed against the appellant.

4.Learned counsel for the bank opposed this prayer and he made specific reference to the affidavit filed by the appellant in support of the prayer for condonation of delay. According to him, there is no explanation much less any satisfactory explanation for condonation of the long and inordinate delay caused by the appellant. Therefore, according to

him, the order passed by the court does not merit any interference.

5. We have considered the submissions made. Admitted facts were that the ex parte decree was passed by the Sub Court on 21.11.2009 and the IAs in question were filed by the appellant only on 25.1.2013 and that in the mean while, delay of 1129 days was caused. The affidavit filed by the appellant would show that after entrusting the matter with an advocate, appellant had gone to Tamil Nadu and was working in an estate there. It is stated that while so, he was inflicted with Jaundice and was laid up for a considerably long period and as a result, he could not file his written statement and it was in such circumstances, that he was set ex parte on 21.11.2009. He proceeds to state that thereafter, he came to Kerala on 23.1.2013 and after gathering the details, filed the IAs in question.

6. Above averments in the affidavit would show that his employment in Tamil Nadu and his ailment were the cause for his absence and the consequential order

setting him ex parte passed by the court on 21.11.2009. No explanation whatsoever has been offered by the appellant to substantiate his prayer for condonation of delay that has occurred after 21.11.2009 till 25.1.2013. This, therefore, shows that the court below was justified in declining the request of the appellant for condonation of delay of 1129 days in applying for setting aside the ex parte decree passed by it on 21.11.2009. The order does not merit interference.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

kkb.

/True copy/

PS to Judge