

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

FAO.No. 304 of 2014 ()

AGAINST THE ORDER IN IA NO.147/2014 IN OS NO.8/2007 OF SUB COURT,
KOCHI DATED 26.5.2014

APPELLANT:- (PETITIONER/PLAINTIFF) :

SAJNA C,
AGED 26 YEARS, W/O.ABDUL MUNEER
RESIDING AT CC.XXII/1340,
EDACOCHIN, COCHIN-682 005

BY ADV. SRI.T.M.ABDUL LATHIF

RESPONDENTS:- (RESPONDENTS/DEFENDANTS)

1. EMMY AGUSTUS,
AGED 50 YEARS, W/O.AGUSTUS CYRIL,
PROPRIETRIX, M/S.CYRIL BUILDERS, MOOMTHUGAL,
FOOR NO.CC.XIV/1242,
NAZARATH P.O., KOCHI-682002
2. CATHERINE JASMINE LUIZ,
D/O.ROBERT LUIZ,
C.C.NO.I/1439, PATTALAM DESOM,
FORT KOCHI VILLAGE,
FORT KOCHI P.O., PIN: 682001

R1 BY ADV. SRI.K.L.JOSEPH
R1 BY ADV. SRI.V.T.JOY
R1 BY ADV. SRI.V.NAMADEVA KAMATH
R2 BY ADV. SMT.SANTHI.K.PAI

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

F.A.O.No.304 of 2014

Dated this the 17th day of November, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the plaintiff in O.S.No.8 of 2007 on the file of the Sub Court, Kochi, who is aggrieved by the order passed by that Court in I.A.No.147 of 2014, filed by her under order IX rule 9 of CPC for restoration of the suit.

2. We heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

3. The appellant filed O.S.No.8 of 2007 for specific performance of a contract for sale of an immovable property. The first respondent filed her written statement and the second respondent, who got herself impleaded, also filed written statement. From the order impugned, we find that the suit was dismissed earlier on two occasions and was restored on both occasions on payment of costs. Even thereafter when the suit was listed for trial, the appellant was absent and the suit was dismissed for the third time. However in the application which led

to the impugned order, the reason stated by the appellant is that she was not available for appearance in court on account of a sudden bereavement in her family and the non availability of her counsel. These reasons were declined to be accepted by the court below as sufficient reasons for setting aside the judgment dismissing the suit. Though we find substance in the conclusion of the court below that the appellant was not prosecuting the suit with due diligence, still having regard to the reasons stated by her and the fact that the suit is for specific performance and that according to the appellant substantial payment has already been made by her, we are inclined to give one more opportunity to her to contest the suit on merits.

Therefore, we set aside the order passed by the court below in I.A.No.147 of 2014 and restore O.S.No.8 of 2007 to the file of the Sub Court, Kochi. This shall however be subject to the condition that the appellant shall pay cost of Rs.10,000/- (Rupees Ten thousand only) to the first defendant within 15 days from today. Subject to payment of cost as above, suit will stand restored and the parties will appear before the Sub Court, Kochi

F.A.O.No.304 of 2014

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on 15.12.2015. The court will thereupon proceed with trial and dispose of the suit, as expeditiously as possible.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc