

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

FAO.No. 311 of 2014 ()

FROM THE ORDER DATED 25.1.2014 IN I.A.NO.3137/2010 &I.AO.3138/2010 IN
O.S.NO.201/1998 ON THE FILES OF THE PRINCIPAL SUBORDINATE JUDGE,
THALASSERY.

APPELLANT/PETITIONER:

ARAKKAL PARAKKAT MUHAMMED BASHEER AGED 45 YEARS
S/O.UMMER, MALLA ROAD, THALASSERY
KANNUR DISTRICT
THROUGH POWER OF ATTORNEY HOLDER NASEER A.P S/O.UMMER
AGED 42 YEARS, DAR-S-SALAM, CHETTAMCOON
THALASSERY, KANNUR DISTRICT

BY ADVS.SRI.M.SASINDRAN
SRI.SATHEESHAN ALAKKADAN
SRI.P.K.SUBHASH

RESPONDENTS/RESPONDENTS/PLAINTIFF/DEFENDANT NO.2:

1. VALLAKKANDY ASHRAF, AGED 47 YEARS
S/O.ABOOBACKER, THIRUVANGAD AMSOM, VADIKKADAM DESOM
THALASSERY, KANNUR DISTRICT 670 001

2. THE THALASSERY PRIMARY CO-OPERATIVE AGRICULTURAL
VILLAGE DEVELOPMENT BANK, THALASSERY, KANNUR DISTRICT
670 001 REPRESENTED BY ITS SECRETARY

R1 BY ADV. SMT.K.DEEPA (PAYYANUR)

R1 BY ADV. SRI.V.R.NASAR

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

FAO.No. 311 of 2014

APPENDIX

APPELLANT'S ANNEXURES:

I: COPY OF THE DOCKET OF CRP FILED BY THE PETITIONER CONTAINING THE SEAL OF THIS HONOURABLE COURT EVIDENCING FILING THE CASE ON 21.5.14

II: COPY OF THE ORDER SHEET, CONTAINING THE DEFECTS NOTED BY THE REGISTRY DATED 6.6.2014

RESPONDENTS' ANNEXURES: NIL

RKC

TRUE COPY

PA TO JUDGE

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

F.A.O.No.311 of 2014

Dated this the 13th day of October, 2015

JUDGMENT

Asha, J.

This appeal is filed against the order dated 25.1.2014 passed in I.A.No.3137 of 2010 and I.A.No.3138 of 2010, by the Principal Subordinate Judge of Thalassery. I.A.No.3137 of 2010 was filed for condoning delay of 2377 days in filing the petition for setting aside the exparte decree.

2. The suit was filed for specific performance of an agreement for sale. Appellant is the 1st defendant in the suit. The suit was decreed on 14.1.2004. The application for setting aside ex-parte decree was filed, along with the petition to condone delay, on 30.8.2010. In the affidavit filed in support of the petitions, the appellant stated that he got an employment in Saudi Arabia and left India on 11.3.2003, appointing his uncle as his Power of Attorney holder to conduct the case for him. He stated that on 6.6.2004, he left Saudi Arabia to Bangladesh where he happened to be arrested by Bangladesh Police on the basis of a private complaint and he was detained. He got bail only on 23.10.2005. He returned to India on 21.6.2006. It is stated that in the meanwhile the Power of Attorney holder, who is his uncle

passed away. After reaching India on 21.6.2006, he was not in a mental condition to return to his home town due to the detention he underwent in Bangladesh. Therefore he stayed in Calcutta for 2 years and reached Thalaserri in March 2010. He filed the interlocutory applications on 30.8.2010, for condoning delay of 2287 days.

3. Appellant got himself examined as PW1 and marked Exts.A1 to A21. The court below dismissed the interlocutory applications. On consideration of all the materials the trial court found that there was no proper explanation either for the absence of the power of attorney holder when the suit was listed or for the delay at least after he came to India in 2006. The I.As were dismissed in the above circumstances.

4. We heard the learned counsel on either side. It is submitted by the learned counsel for the 1st respondent that the respondent had already cleared the liabilities in order to get the sale deed executed in terms of the decree and that the appellant wants to protract the matter.

5. We have considered the rival contentions on either side. It is the version of the appellant himself that after the employment in Saudi Arabia and remand in Bangladesh he returned to India on 21.6.2006 and stayed in Calcutta for 2 years. But he does not even disclose his whereabouts after those 2 years, when according to him he reached

his hometown only in March 2010. There would have been justification in case he filed the I.A. immediately after he reached India in 2006 or at least after the 2 years' stay in Calcutta, in view of the mental trauma he experienced. He chose to file the I.A only in August 2010. The request to have an adjudication on merits could have been granted in case there was any satisfactory explanation for the delay at least for the period after the 2 years' stay in Calcutta.

In the above circumstances, we do not find anything wrong in the order passed by the court below, which warrants interference. The judgments relied on in the appeal do not apply in the facts and circumstances of the case.

Under these circumstances we dismiss the appeal.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc