

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

RFA.No. 168 of 2005 (E)

**AGAINST THE ORDER/JUDGMENT IN OS 477/1999 of PRINCIPAL SUB COURT,
TRIVANDRUM DATED 11-09-2002**

APPELLANT/PLAINTIFF:

**K.P.PADMAKUMAR, AGED 41,
S/O. PARAMESWARAN PILLAI, HINDU MALE
RESIDING AT MURUKA VILASOM, T.B.JUNCTION,
MANALLOOR, NEYYATTINKARA.**

BY ADV. SRI.S.SANAL KUMAR

RESPONDENT/DEFENDANT:

**M.SUBRAMONIAM,
AGED 58, S/O. MANIAKAM PILLAI, HINDU MALE
RESIDING AT T.C.24/606, LION ROAD, THYCAUD
THIRUVANANTHAPURAM.**

**BY ADVS. SRI.M.RAMASWAMY PILLAI
SRI.P.M.JOSEPH**

**THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.
=====

R.F.A.No.168 of 2005
=====

Dated this the 30th day of January, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the plaintiff in O.S.No.477 of 1999 on the file of the Court of the Principal Subordinate Judge of Thiruvananthapuram. The respondent is the defendant therein. The appellant instituted O.S.No.477 of 1999 on 16.11.1999 for realisation of the sum of Rs.7,81,000/- with interest and costs from the defendant and his assets. When the suit came up for hearing on 11.9.2002 the plaint was rejected on the short ground that the balance court fee has not been paid. Hence this appeal.

2. We heard Smt.Bhavana, learned counsel appearing for the appellant and Sri.M.Ramaswamy Pillai, learned counsel appearing for the respondent. We have also gone through the copy of the B diary/proceedings paper which were called for through the Registry. The B diary/proceedings paper disclose that the suit was instituted on 16.11.1999. Summons was issued on 12.1.2000 to the defendant with the hearing date fixed as 1.3.2000. On that day the defendant appeared and sought time for filing a written statement.

The suit was accordingly adjourned to 4.7.2000. On 4.7.2000 it was adjourned to 9.10.2000 and on 9.10.2000 to 15.1.2001 and on 15.1.2001 to 26.5.2001 and on 26.5.2001 it was adjourned to 6.8.2001 for the written statement of the defendant. On 6.8.2001 it was adjourned to 8.8.2001. On 8.8.2001, the written statement was filed and the suit was adjourned to 16.11.2001 for framing issues. On 16.11.2001 it was adjourned to 5.2.2002 and still later to 1.6.2002. On 1.6.2002 it was again adjourned to 12.8.2002 for settling issues. Issues were settled on 12.8.2002 and the suit was adjourned to 11.9.2002 for payment of the balance court fee. On that day when the suit was called on for hearing, for the reason that the balance court fee of Rs.73,405/- had not been paid, the plaint was rejected. Hence this appeal. The main ground raised in the appeal memorandum is that though issues were settled on 12.8.2002 and the suit was adjourned to 11.9.2002 for payment of the balance court fee, the learned counsel for the appellant in the court below did not inform him about the same and that was the reason why the balance court fee was not paid. It is contended that by rejecting the plaint, the appellant has been denied an opportunity to have the suit decided on the merits.

3. Smt.Bhavana, learned counsel appearing for the appellant

contended that but for the fact that the learned counsel appearing for the appellant had not duly intimated the appellant about the fact that the balance court fee had to be paid before 11.9.2002, the plaint would not have been rejected and that the appellant was always ready and willing and had the means to pay the balance court fee. She submitted that in such circumstances, as the appellant is willing to pay the balance court fee within ten days from today, the impugned judgment may be set aside and the suit restored to file. Sri.M.Ramaswamy Pillai, learned counsel appearing for the respondent submitted that the case set out in the instant appeal memorandum is that it was only in the year 2005 that the appellant came to know about the rejection of the plaint when he made enquiries in the court consequent on the counsel giving him the impression that the case is pending and that the said plea cannot be accepted for the reason that the suit was filed in the year 1999 and the appellant/plaintiff should have been vigilant in prosecuting the suit. In our opinion, the appellant/plaintiff cannot any longer put forward the plea that as the appeal was filed only on 25.2.2005, more than one year after the plaint was rejected for non-payment of the court fee for the reason that the very same reason which had been put forward in the affidavit filed in support

of the application to condone the delay of 419 days in filing the appeal was accepted by this Court and the delay in filing the appeal was condoned. It is evident from the B diary/proceedings paper that the plaint was rejected on 11.9.2002, the day on which the suit stood posted for payment of balance court fee. The court below ought to have even assuming that the balance court fee had not been paid in time namely within 30 days from 12.8.2002, granted the plaintiff another opportunity to pay the balance court fee. Having regard to the fact that the suit is one for realisation of the sum of Rs.7,81,000/- and the stakes involved are substantial, we are of the opinion that the appellant should be afforded an opportunity to have the suit tried and disposed of on the merits instead of being non-suit for non-payment of the court fee. We therefore deem it appropriate to allow the appeal subject to the condition that the balance court fee payable in the appeal shall be paid within ten days from today.

We accordingly allow the appeal, set aside the judgment delivered by the Court of Principal Subordinate Judge of Thiruvananthapuram on 11.9.2002 in O.S.No.477 of 1999 and restore the suit to file, subject to the condition that the balance court fee payable on the plaint shall be remitted within ten days

from today. Having regard to the fact that the suit was instituted on 16.11.1999 we also deem it appropriate to direct that in the event of the balance court fee being paid, the suit shall be tried and disposed of expeditiously and in any event within six months from today.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANIL K.NARENDRA
JUDGE**

vpv

"The learned District Judge, Thiruvananthapuram, vide letter dated 17/03/2015 addressed to the Registrar (Judicial) has forwarded a letter dated nil of the learned Principal Subordinate Judge, Thiruvananthapuram informing that the appellant/plaintiff has not remitted the balance court fee in O.S. 477/1999.

Since the above suit was ordered to be restored subject to the condition that the appellant remits the balance court fee payable within 10 days from the date of judgment, the appellant/plaintiff will be entitled for the benefit under that judgment only if the aforesaid condition is complied with, within the period stipulated in the judgment."

Vide order dated 30/06/2015 in R.F.A. 168/2005.

Sd/-

Registrar (Judicial)