IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

RFA.No. 136 of 2006 ( )

OS 17/2002 of PRINCIPAL SUB COURT,KOCHI

APPELLANT/DEFENDANT::

M/S.MAPCO CARTONS (P) LTD.
INDUSTRIAL DEVELOPMENT PLOT, 22/84, ANGAMALY-683572
REPRESENTED BY ITS MANAGING DIRECTOR, P.M.MOIDEEN,
AGED 49 YEARS, SON OF LATE P.M.MUHAMMED HUSSAIN,
RESIDING AT 23/214, ANGAMALY, ERNAKULAM DISTRICT

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.C.N.SREEKUMAR

RESPONDENT/PLAINTIFF::

M/S.SARASWATHY AGENCIES, NO. 175,
VI/1017, PUNJIRAPOL ROAD, MATTANCHERY
KOCHI-2, REPRESENTED BY ITS MANAGING PARTNER
E.BALAKUMAR, AGED 52 YEARS, SON OF EKARAMBAM PILLAI
RESIDING AT 42, K.V.COLONY, PANAMPILLY NAGAR
ERNAKULAM

BY ADV. SMT.M.HEMALATHA

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12-06-2015, THE COURT ON 19-06-2015 DELIVERED THE FOLLOWING:

bp

THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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C.M.Appln. No.382 of 2006 &
R.F.A. No. 136 of 2006

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Dated this the 19th day of June, 2015

JUDGMENT

Sunil Thomas J.

This application is filed on behalf of the sole defendant in a suit for money, seeking condonation of delay of 647 days in preferring this appeal.

2. The case of the applicant is that he is the managing director of the appellant company, which suffered the decree for money. The certified copy of the decree was received on 11/3/2004, which was not known to him till December, 2004. The appellant was out of station from first of June, in connection with the treatment for back pain. Thereafter, he was on rest and went out of house for the first time on 27/6/2005, but could not contact the lawyer. His business had run into difficulties and amounts due to the company had to be recovered. Since he was not liable to pay any amount to the plaintiff, the matter did not come to his memory. On

20/2/2006 his wife happened to see the notice affixed on the outer wall of the company and on enquiry it was understood that since the decree was not challenged in appeal, the execution proceedings have been initiated. The appeal ought to have been filed on or before 9/6/2004. Since the delay was due to reason beyond his control, he sought condonation of delay of 647 days in filing the appeal.

3. The contesting respondent/plaintiff appeared and objected to the various claims made in the application. In the counter affidavit it was alleged that there was laches on the part of the appellant and he willfully abstained from contacting the lawyer. He was grossly negligent and has approached this Court only after coercive steps were initiated against him.

4. Heard and perused the records.

5. It is an admitted fact that the defendant had appeared in the suit and filed the written statement. He was examined as DW1 and the suit was decreed for a sum of Rs.2,78,814/- with future interest. Admittedly, decree copy was obtained by the appellant on 11/3/2004. He has explained that from June 2004 to December 2004, he was undergoing treatment. There is

absolutely no evidence to show that he was undergoing any treatment. Further, the period between 11th March 2004 to June 2004 is not seen explained. Even according to the appellant, after his treatment, he went out of his house only on 27/6/2005. There is absolutely no explanation as to why he could not contact the lawyer or to take the necessary steps during six months period between December 2004 and June 2005.

6. Further, even though he has stated that he met the counsel on 31/8/2005, he did not discuss the case details with him. It appears to be strange that a client who meets the lawyer forgets to discuss about a litigation in which he himself was examined and involving about Rupees Three Lakhs. It is also on record that his wife was assisting him in the business. She has also not conducted any enquiry. It is also pertinent to note that the period in between 27/6/2005 and 31/8/2005 is also not explained. Though he met the counsel on 31/8/2005, he came to know about the decree only on 20/2/2006. Regarding the period in between 31/8/2005 and 20/2/2006 there is absolutely no reliable explanation except a vague explanation that the matter relating to the case did not come to his mind " due to other

serious matters". This evidently shows how negligently and casually the delay is sought to be explained.

7. The only conclusion that can be drawn is that the appellant was grossly negligent and has not set up any valid explanation for the long delay.

8. On merits also, the case set up by the defendant does not appear to be convincing. The suit was instituted by the plaintiff for recovery of a sum of Rs.3,27,404.50 claimed to be the debt outstanding on the account of the defendant, based on a series of transactions which the defendant firm had with the firm of the plaintiff, during the period 1998 - 99 . According to the plaintiff, the total purchases made by the defendant was for Rs.4,54,416.50 and after deducting the entire payments made, the balance due was Rs.2,05,926.50. After issuing the lawyer notice, the suit was filed.

9. Before the Court below, the plaintiff and the defendant adduced evidence. The plaintiff relied on the oral testimony of himself, coupled with invoices Exts.A2 to A10 and A21 and Ext.A11 and A12 statements of accounts. The defence set up was thoroughly inconsistent and contradictory to each other.

The court below while evaluating the evidence found that in the first part of the written statement, the defendant completely denied the transaction and went to the extent of stating that he never had any dealing with the plaintiff directly. In the second part of the written statement, he admitted that the transaction with the plaintiff company was through one Venugopalan. He set up a plea that he had paid around Rs.95,000/- to the said Venugopalan after 4/3/1999. To substantiate it, he relied on Exts.B1 and B2 series of vouchers. The court below held that they are self serving vouchers, which cannot be relied on. The court below further held that the amount allegedly paid directly to Venugopalan was not proved. It is also highly unbelievable for the reason that the period during which he is alleged to have paid Venugopalan, he had already ceased to be the employee of the plaintiff company.

10. Another defence set up by the defendant was that after discussing with the plaintiff, there was an agreement to reduce the amount due, covered by one invoice from Rs.1,12,650/- to 42,650/-. It was contended that the goods supplied by the above invoice was substandard. There is

absolutely no evidence to prove the quality of the goods sold. Further, the court below found that such contention was set up only to wriggle out of the liability. There was also nothing to prove that the quality of the goods supplied was inferior.

11. However, the court below concluded that the plaintiff is entitled for a decree for a sum of Rs.2,78,414/- with 9% interest. The findings of the court below is based on the definite, convincing and cogent evidence. In the first appeal, no ground has been made out to interfere with the judgment and decree. We find no merit in the application to condone the delay as well as in the appeal. Hence, the CMA and the appeal are dismissed both on the ground of delay as well as on merits.

The appeal is dismissed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/True copy/ PS to Judge.