

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

OP(C).No. 5 of 2015 (O)

AGAINST THE ORDER dtd. 14.10.14 IN I.A.1128, 1129 & 1130 of 2014 in
AS 12/2007 of SUB COURT, TIRUR

PETITIONER:

JAYAN, S/O. LATE PACHU,
THATTARUPURAKKAL
VADAKKUMBRAM AMSOM DESOM, TIRUR TALUK
MALAPPURAM DISTRICT.

BY ADVS.SRI.K.RAMACHANDRAN
SMT.M.C.BINDUMOL

RESPONDENT:

MUHAMMED
CHENADAN PATHIYARATHIL, VADAKKUMBRAM AMSOM DESOM
TIRUR TALUK, P.O.TIRUR, MALAPPURAM DISTRICT
PIN-676 101.

BY ADV. SRI.P.VENUGOPAL.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 5 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE AFFIDAVIT IN SUPPORT OF I.A.1128/2014
DATED 20.6.2014 FILED IN A.S.12/2007 BEFORE THE SUB COURT,
TIRUR.
- P2: COPY OF THE AFFIDAVIT IN SUPPORT OF I.A.1129/2014
DATED 20.6.2014 FILED IN A.S.12/2007 BEFORE THE SUB COURT,
TIRUR.
- P3: COPY OF THE AFFIDAVIT IN SUPPORT OF I.A.1130/2014
DATED 20.6.2014 FILED IN A.S.12/2007 BEFORE THE SUB COURT,
TIRUR.
- P4: COPY OF THE COMMON ORDER DATED 14.10.2014 IN
I.A.NOs.1128/2014 AND 1129/2014 IN A.S.12/2007 BEFORE THE
SUB COURT, TIRUR.
- P5: COPY OF THE ORDER IN I.A.1130/2014 IN A.S.12/2007 BEFORE THE
SUB COURT, TIRUR.

RESPONDENT'S EXHIBITS: NIL

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.5 OF 2015

Dated this the 5th day of February, 2015.

J U D G M E N T

Under challenge is Exts.P4 and P5 orders dated 14.10.2014 whereby the court below dismissed I.A.Nos.1128, 1129 and 1130 of 2014 in A.S.No.12/2007 of Sub Court, Tirur. The facts absolutely necessary for the purpose of disposal of this petition are as follows:

2. The sole appellant in A.S.No.12/2007 died during the pendency of the appeal and his legal heirs filed the above applications for condoning the delay in filing the application to set aside abatement, for setting aside the abatement and also for impleading them as supplementary appellants. It was contended before the court below that the legal heirs were not aware of the pendency of the appeal and that is the reason for the delay. The respondent raised objection and pointed out that no sufficient reason has been given and the reason given is not acceptable.

3. The court below, on the basis of the materials before it,

came to the conclusion that the claim of the petitioners therein that they were not aware of the pendency of the appeal cannot be said to be true and dismissed the petitions.

4. Probably, it will be difficult to say that the petitioners before the court below were not aware of the pendency of the appeal. However, the fact remains that by declining to grant relief to them, valuable right of the petitioners is being denied to them on technical ground. On the other hand, no particular harm is caused to the respondent by having the matter heard on merits. It is well settled that technicalities shall not stand in the way of doing justice in the matter.

This original petition is allowed. The impugned orders are set aside and the petitions are allowed. The court below is directed to take up the appeal and dispose of it within a period of one month from the date of appearance of the parties. The parties shall appear before the lower appellate court on 03.03.2015.

Sd/-

P.BHAVADASAN
JUDGE

smp