

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

OP(C).No. 125 of 2015 (O)

**IA.NO.8052/2013 IN O.S.NO.328/2011 OF IIND ADDITIONAL MUNSIFF COURT,
THIRUVANANTHAPURAM, DATED 23/10/2014**

PETITIONER(S)/COUNTER PETITIONER:

**PRABHAKARAN, AGED 60 YEARS,
S/O.SOMAN, RESIDING AT T.C.30/474(1), ANAYARA P.O.
KADAKAMPALLY VILLAGE, TRIVANDRUM.**

**BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENT(S)/PETITIONER:

**K. SUBHASHINI, AGED 61 YEARS
RESIDING AT T.C.36/473, PART TIME LAST SERVANT
VALLIYAKATTIL VEEDU, MANACAUD, ANAYARA P.O.
KADAKAMPALLY VILLAGE, THIRUVANANTHAPURAM, PIN 695027.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 20-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

OP(C).No. 125 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: COPY OF THE PLAINT IN O.S.NO.328/2011 IN THE FILE OF MUNSIFF COURT, TRIVANDRUM.**
- EXHIBIT-P2: COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT IN O.S.NO.328/2011 IN THE FILE OF MUNSIFF COURT, TRIVANDRUM.**
- EXHIBIT-P3: COPY OF THE I.A.NO.3858/2013 FILED BY THE DEFENDANT IN O.S.NO.328/2011 IN THE FILE OF MUNSIFF COURT, TRIVANDRUM.**
- EXHIBIT-P4: COPY OF THE OBJECTION FILED BY THE PETITIONER TO I.A.NO.3858/2013.**
- EXHIBIT-P5: COPY OF THE I.A.NO.8052/13 IN O.S.NO.328/2011.**
- EXHIBIT-P6: COPY OF THE OBJECTION TO I.A.NO.8052/13 IN O.S.NO.328/2011.**
- EXHIBIT-P7: COPY OF THE ORDER IN I.A.NO.8052/13 DATED 23/10/14.**
- EXHIBIT-P8: COPY OF THE ORDER IN I.A.NO.3858/13 DATED 22/11/14.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.BHAVADASAN, J.

Original Petition (Civil) No.125 OF 2015

Dated this the 20th day of January, 2015.

J U D G M E N T

This original petition under Article 227 of the Constitution of India is filed by the petitioner aggrieved by Exts.P7 and P8 orders passed by the court below in I.A.Nos.8052/2013 and 3858/2013 in O.S.No.328/2011 respectively.

2. The petitioner as plaintiff laid O.S.No.328/2011 for permanent prohibitory injunction. It is not in dispute that the defendant had entered appearance and filed written statement. On the date on which the case was listed for trial, it so happened that the defendant was absent and she was set at ex parte and an ex parte decree was passed. Coming to know about the same, defendant filed I.A.No.3858/2013 to have the ex parte decree set aside. She pointed out that she had not received any communication from her counsel regarding the date of hearing and that was the cause of her absence on the date of trial. The court below found no reason to doubt the version given by the

defendant for her absence and allowed the petition on payment of cost of Rs.1,000/- to the plaintiff.

3. Assailing the said order, learned counsel appearing for the petitioner points out that the petitioner was not examined and no affidavit is seen filed by the counsel who was appearing for the defendant in the suit informing that he could not inform his client about the posting of the case and in fact the proper procedure was to ask the counsel to prepare an affidavit in the matter. The petitioner had moved a petition for examination of the said counsel. That was dismissed by the court below. It is therefore contended that the petitioner was precluded from adducing evidence which would show that the reason given for setting aside the ex parte decree is not correct.

4. Learned counsel appearing for the petitioner went on to point out that setting aside ex parte decree is not a matter of course and sufficient cause has to be shown for the absence of the defendant on the date on which suit was listed for trial. No such cause is shown and therefore the order cannot be sustained.

5. It cannot be disputed that the defendant did file a written statement and was contesting the case very diligently. There was no finding by the court below that there was any previous default on the part of the defendant. On the date on which the case was listed for trial it was true that the defendant was absent. According to the defendant, he was not informed about the posting of the case. It is also true that the court below did not allow the application filed by the petitioner herein to have the counsel for the defendant examined. However, it may be noticed that the court below, finding that there is no reason to doubt the version given by the defendant and that any loss or injury caused to the plaintiff can be compensated by awarding of cost, allowed the petition. It is well settled that technicalities shall not stand in the way of doing justice in the matter. As already noticed, it is not a case where there is gross negligence on the part of the defendant. There is nothing to show that except on the date on which the case was listed for trial, the defendant was absent and she was not taking appropriate steps in the matter. If the court below under those circumstances

chose to accept the version given by the petitioner before the court that it was due to reasons beyond her control that she could not appear before the court on the date on which the case was listed for trial, it could not be found fault with. At any rate, no prejudice is caused to the plaintiff in the suit in having the case decided on merits.

6. For the above reasons, this Court finds that there is no reason to interfere with the impugned orders.

This original petition is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp