

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

OP(C).No. 326 of 2015 (O)

IA.NO.684/2013 IN A.S.NO.45/2013 OF DISTRICT COURT, THIRUVANANTHAPURAM.
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PETITIONER:

**K.V.PRABHA DEVI, D/O.KAMALAKSHI,
AGED 61 YEARS, 'KRISHNA', CHURCH ROAD,
THUNDATHIL.P.O., IROOPPARA VILLAGE,
THIRUVANANTHAPURAM.**

BY ADV. SRI.THIRUMALA P.K.MANI

RESPONDENT(S):

- 1. THANKARAJ, AGED 40 YEARS,
GOVERNMENT EMPLOYEE, RESIDING AT
KAVITHA VILASOM, THUNDATHIL.P.O,
ALINERA MURI, IROOPPARA VILLAGE,
THIRUVANANTHAPURAM - 695 581.**
- 2. KAVITHA RANI, W/O.THANKARAJAN,
HOUSE WIFE, AGED 32 YEARS,
KAVITHA VILASOM, THUNDATHIL P.O.,
ALINERA MURI, IROOPPARA VILLAGE,
THIRUVANANTHAPURAM - 695 581.**

**BY ADVS. SRI.M.FATHAHUDEEN
SRI.LATHEESH SEBASTIAN**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 326 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1- TRUE COPY OF THE DELAY CONDONATION PETITION I.A.NO.684/2013.
- P2- TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT TO THE EXT.P1.
- P3- TRUE COPY OF THE ORDER IN I.A.NO.684/2013 DATED 28.10.2014.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

B.KEMAL PASHA, J.

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O.P.(C).No.326 of 2015

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Dated this the 3rd day of July, 2015

J U D G M E N T

Exhibit P3 order is under challenge. It seems that a delay of 293 days for filing the appeal has been condoned by the court below through Exhibit P3 order. I.A.No.684 of 2013 is seen as one filed under Section 14 of the Limitation Act and not under Section 5 of the Limitation Act. It has been pleaded in the I.A. that there occurred a delay in applying for the certified copy of the judgment and decree at the first instance. Even though the judgment and decree were passed on 05.11.2011 on the dismissal of the suit, application for certified copies was filed on 09.12.2011 only.

Even after the receipt of the copies, the concerned counsel, who obtained the copies, was sleeping over the copies and did not give the copies to the parties. In the meantime, it is alleged that the party has approached this Court also for reliefs, through an Original Petition (Civil) and on the objection raised from the Registry, the same was not numbered.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The learned counsel for the petitioner has pointed out that the court below ought not to have condoned the delay, as the delay was sought to be condoned under Section 14 of the Limitation Act and especially when the application was not filed under Section 5 of the Limitation Act. On going through the averments in the I.A., it is evident that what was intended to be invoked by the party is the ground under Section 5 of the Limitation Act by way of extension and what was sought for was to get the delay condoned and not for the exclusion of the period.

Apparently, the exclusion of time was not claimed and therefore, Section 14 of the Limitation act has no application at all. Matters being so, as pointed out by the learned counsel for the respondent, the incorporation of Section 14 of the Limitation Act in the caption of the I.A. Could nothing but an instance of misquoting of the provision of law.

4. The learned counsel for the petitioner has invited the attention of this Court to the decision in ***Rejeswari v. Anil Fire Works Factory [2004 (1) KLJ 225]***; wherein it was held that there is a distinction between Section 5 and Section 14 of the Limitation Act and in a case wherein an extension of time is required, Section 14 of the Limitation Act has no application at all. There is no quarrel with the said legal proposition. Here even though Section 14 of the Limitation Act is quoted, what was claimed was by way of extension of the time and not one of exclusion of time.

5. The learned counsel for the respondent has pointed out that the Original Petition itself is not maintainable as the impugned order is one revisable under Section 150 of the

Code of Civil Procedure, 1908. When such efficacious remedy is there, the party cannot invite the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. Whatever it is, this Court is of the view that this Original Petition (Civil) can be dismissed. Let the parties go by the appeal.

In the result, this Original Petition (Civil) is dismissed.

Sd/-

B.KEMAL PASHA
JUDGE