

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

OP(C).No. 357 of 2015 (O)

EP 74/2013 of SUB COURT, SULTHAN BATHERY

PETITIONER :

**A.ANSAR, AGED 29 YEARS, S/O.ABDULLA
ANIYARATH (HOUSE) KAMBALAKKAD (O.O)WAYANADU,
PIN 673121.**

BY ADV. SRI.JESWIN P.VARGHESE

RESPONDENT :

**THARIQ ANVAR, AGED 33 YEARS,
S/O.SAIDALAVI, KADAVAN (HOUSE) ARIVARAM KUNNU,
KAMBALAKKAD (P.O) WAYANADU, PIN 673121.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

P. BHAVADASAN, J.

O.P.(C). No. 357 of 2015

Dated this the 9th day of February, 2015.

JUDGMENT

This is a petition filed under Article 227 of the Constitution of India seeking a direction to District Court, Wayanad at Kalpetta to take up Ext.P2 application, i.e., I.A. No. 288 of 2014 in A.S. 14 of 2014, as expeditiously as possible or within the time limit stipulated by this Court.

2. The petitioner, who was the defendant in the suit suffered a decree at the hands of the trial court. The suit was one for specific performance. The petitioner who is the defendant in the suit has specifically denied the execution of the agreement and according to him, it is a forged one. According to the petitioner, against the decree, an appeal was filed along with Ext.P2 application namely, I.A. 288 of 2014 for condoning the delay.

3. The grievance of the petitioner is that the delay petition has not been considered and in the

meanwhile decree holder has taken out execution and warrant has been issued against him. He therefore prayed that there may be a direction to the court below to consider I.A. 288 of 2014 in A.S.14 of 2014 and till that is considered and disposed of, keep the execution proceedings in abeyance.

4. It is seen that the petitioner suffered a decree for specific performance. The case of the defendant is that even though he had entrusted the counsel to get certified copy of the decree, the case bundle was misplaced and it could not be recovered for a long time. Later on, the petitioner engaged another counsel to get certified copy of the decree. By that time, time for filing the appeal has been over and therefore, he filed an application to condone the delay in filing the appeal. That petition is pending.

5. The grievance of the petitioner is that in the meanwhile, the decree holder took out execution and warrant has been issued against him. Therefore, the

petitioner prayed that there may be a direction to the court below to dispose of Ext.P2 application and till then, warrant may be kept in abeyance.

6. In the light of the order that is proposed to be passed in this Original Petition, notice to the respondent appears to be unnecessary.

This Original Petition is disposed of directing District Court, Wayanad at Kalpetta to take up I.A. 288 of 2014 in A.S. 14 of 2014 and dispose of it in accordance with law after hearing both sides as expeditiously as possible, at any rate, within one month from today. Execution of warrant shall be kept in abeyance for a period of one month from today.

sb.

P. BHAVADASAN,
JUDGE