

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

OP(C).No. 520 of 2015 (O)

(E.P.51/2013 in O.S.48/2012 of Sub Court, Nedumangad)

PETITIONERS:

1. SUNDHAR RAJ,
S/O.SAMUEL, SALOM BHAVAN, ERADI,
PANACODE, CHITTUVEETTU MURI, EZHAMALAKKAL VILLAGE,
NEDUMANGAD TALUK, THIRUVANANTHAPURAM DISTRICT.
2. SMITHA,
W/O.SUNDHAR RAJ, SALOM BHAVAN, ERADI
PANACODE, CHITTUVEETTU MURI, EZHAMALAKKAL VILLAGE,
NEDUMANGAD TALUK,
THIRUVANANTHAPURAM DISTRICT.

PETITIONERS 1 & 2 REPRESENTED BY THEIR POWER OF
ATTORNEY HOLDER SRI.M.P.MICHAEL
AGED 61 YEARS, S/O.MOOSA NADAR
RESIDING AT NEERMALI VEEDU, KEEZHARoor (P.O.)
NEYATTINKARA, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI. NEMOM CHANDRA BABU

RESPONDENT:

SHAHIDA BEEVI,
W/O.ABDUL SALAM, HAZEENA MANZIL, NEAR MARKET JUNCTION,
THEKKUMKARA MURI, NEDUMANGAD VILLAGE, NEDUMANGAD TALUK
THIRUVANANTHAPURAM DISTRICT-695 101.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 520 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.NO.48/2012 BEFORE THE SUB COURT, NEDUMANGAD DATED 11.01.2012.

EXT.P2: TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A.NO.708/2014 IN O.S.NO.48/2012 BEFORE THE SUB COURT, NEDUMANGAD.

EXT.P3: TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A.NO.709/2014 IN O.S.NO.48/2012 BEFORE THE SUB COURT, NEDUMANGAD.

EXT.P4: TRUE COPY OF COMMON ORDER PASSED BY THE SUB JUDGE, NEDUMANGAD IN I.A.NOS.708 &709/2014 IN O.S.NO.48/2012 DATED 27.09.2014.

EXT.P5: TRUE COPY OF THE CMA 91/2014 ON THE FILES OF THE DISTRICT COURT OF THIRUVANANTHAPURAM.

EXT.P6: TRUE COPY OF THE EP NO.51/2013 ON THE FILES OF THE SUB JUDGE, NEDUMANGADU.

EXT.P7: TRUE COPY OF I.A.3312/2014 DTD.15.11.14 TO CONDONE the DELAY OF 6 DAYS IN FILING EXT.P5 FILED BEFORE DISTRICT COURT, THIRUVANANTHAPURAM.

EXT.P8: COPY OF ADVANCE PETITION FILED BEFORE DISTRICT COURT, THIRUVANANTHAPURAM.

EXT. P9: COPY OF PETITION FILED BEFORE DISTRICT COURT, THIRUVANANTHAPURAM TO ORDER NOTICE TO COUNSEL APPEARING BEFORE EXECUTION COURT.

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.520 OF 2015

Dated this the 10th day of March, 2015.

J U D G M E N T

The limited prayer in this original petition is for a direction to the lower appellate court to take up Ext.P7 which is an application to condone the delay in filing an appeal and dispose it of on merits and thereafter the appeal. Further prayer is for a direction to stay the execution proceedings in O.S.No.48/2012 till the delay condonation petition is considered by the lower appellate court.

2. The facts absolutely necessary for the disposal of this original petition are as follows:

The petitioners were defendants in the suit. The suit was one for return of advance amount. When the defendants remained absent, decree followed. The petitioners filed Exts.P2 and P3 applications to set aside the ex parte decree and also to

condone the delay in filing the petition to set aside the ex parte decree. Those petitions were allowed by Ext.P4 order wherein the defendants were directed to deposit the decree amount as a condition precedent for setting aside the ex parte decree. Aggrieved by that portion of the order, petitioners herein filed Ext.P5 namely, C.M.A.No.91/2014 before the lower appellate court. As the said CMA was filed out of time, defendants also filed Ext.P7 delay condonation petition.

3. The grievance of the petitioners is that in the meanwhile, execution proceedings are being taken hastily and the property is posted for sale. It is pointed out by the petitioners that if the appeal is not heard on merits and if in the meanwhile property is put to sale, that will cause irreparable loss and injury to them.

4. There seems to be some substance in the above contention.

This original petition is disposed of directing the lower appellate court to take up Ext.P7 delay condonation petition and dispose it of on merits in accordance with law , after hearing both sides, as early as possible, at any rate, within a period of two

weeks from the date of receipt of a copy of this judgment. In the meanwhile, execution proceedings in O.S.No.48/2012 shall stand stayed for a period of three weeks.

Sd/-

P.BHAVADASAN
JUDGE

smp