

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. 651 of 2015

(Against the common order dtd.20.10.2014 in I.A.1832/2013 in
O.S.634/2008 of Principal Munsiff Court, Kottayam)

PETITIONER/RESPONDENT/PLAINTIFF:

AMMUKUTTY, CHERUVUPARAMBIL,
THIRAVANCHOR KARA, MANARCADU VILLAGE,
KOTTAYAM.

BY ADVS.SRI.LIJI.J.VADAKEDOM
SMT.REXY ELIZABETH THOMAS
SRI.RAJEEV JYOTHISH GEORGE

RESPONDENT/PETITIONER/DEFENDANT:

P V REJIMON
S/O.VARGHESE, PUTHENPURACKAL HOUSE, PAMPADY KARA,
PAMPADY VILLAGE, KOTTAYAM - 686 502.

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

APPENDIX

PETITIONER'S EXHIBITS :

- P1: THE COPY OF THE PLAINT IN OS NO.634/2008 BEFORE THE PRINCIPAL MUNSIF COURT, KOTTAYAM.
- P2: THE COPY OF THE WRITTEN STATEMENT SUBMITTED BY THE DEFENDANT IN OS NO.634/2008 BEFORE THE PRINCIPAL MUNSIF COURT, KOTTAYAM.
- P3: THE COPY OF THE REPLY AFFIDAVIT FILED BY THE PLAINTIFF.
- P4: THE COPY OF THE JUDGMENT DATED 29/03/2010 IN OS NO.634/2008 BEFORE THE PRINCIPAL MUNSIF COURT, KOTTAYAM.
- P5: THE COPY OF THE I.A NO.1832/2013 IN OS.NO.634/2008 BEFORE THE PRINCIPAL MUNSIF COURT, KOTTAYAM.
- P6: THE COPY OF THE OBJECTION FILED BY THE PLAINTIFF TO IA No.1832/2013 IN OS NO.634/2008 BEFORE THE PRINCIPAL MUNSIF COURT, KOTTAYAM.
- P7: THE CERTIFIED COPY OF THE COMMON ORDER DATED 20/10/2014 IN IA NO.1832/2013 & 1833/2013 IN OS NO.634/2008 BEFORE THE PRINCIPAL MUNSIF COURT, KOTTAYAM.

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.651 OF 2015

Dated this the 10th day of March, 2015.

J U D G M E N T

Under challenge is Ext.P7 order whereby the court below thought it fit and proper to condone the delay in filing the petition to set aside the ex parte decree on payment of cost.

2. The respondent was the defendant in the suit. The suit was one for declaration and consequential reliefs. The suit was decreed ex parte. The respondent filed two petitions before the court below; one for setting aside the ex parte decree and the other for condoning the delay in filing the petition to set aside the ex parte decree. In the petition, it was pointed out that at the relevant time when the suit was posted for trial, he was in jail and after being released from jail, he went to Bangalore. It was also pointed out that there was no willful latches or negligence on his part in not filing the petition in time.

3. The petitions were opposed by the petitioner herein who pointed out that the reasons given are not correct and they are

not sufficient to set aside the ex parte decree.

4. For the purpose of Interlocutory Applications, petitioner before the court below examined himself as PW1 and he had Exts.A1 to A6 marked.

5. Though the court below was of the opinion that the reason given may not be as such acceptable, in the interest of justice, the court felt that the defendant be given an opportunity to agitate his case and therefore allowed the applications.

6. Learned counsel appearing for the petitioner assailing the said order contended that the court below should not have allowed the petition to condone delay without sufficient cause being shown for the same. It is not a matter of course. It is pointed out that the valuable rights accrued to the petitioner by lapse of time may be affected by setting aside the ex parte decree. There was no justification for the court below to have done so. Accordingly, it is contended that the order cannot be sustained.

7. It is true that the court below has observed that it was not impressed by the reason given for the delay. But the fact

that defendant was in jail could not be disputed though he had not adduced evidence. It was stated that after the release from jail, he went to Bangalore. It is trite that courts as far as possible should try to decide the case on merits. The court below which is seized of the matter thought it fit and proper to condone the delay and to give opportunity to the defendant to contest the suit and the court was also of the opinion that any loss caused to the petitioner herein could be compensated by awarding costs. Accordingly, costs were awarded and the delay condonation petition was allowed.

8. It is well settled that the discretion exercised by the court unless it is shown to be perverse, shall not be interfered with. By no stretch of imagination, it can be said that the order suffers from any infirmity. If that be so, interference of this Court is not warranted.

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

Sd/-

P.BHAVADASAN
JUDGE

smp