

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

OP(C).No. 906 of 2015 (O)

(O.S.177/2009 OF SUB COURT, ALAPPUZHA)

PETITIONER/DEFENDANT:

MOHANANDAN, S/O. PURUSHOTHAMAN,
PRIVATE COMPANY EMPLOYEE, AGED 50 YEARS YEARS,
RESIDING AT KAITHAVALAPPUCHIRAYIL, PERUNTHURUTHU MURI OF
KANJIKKUZHI VILLAGE, CHERTHALA TALUK, ALAPPUZHA.

BY ADVS.SRI.T.JAYAKRISHNAN
SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENT/PLAINTIFF:

KUNJUMON DEVASSIA, S/O. DEVASSIA, BUSINESS,
AGED ABOUT 50 YEARS, VALLAPPATTIL,
PERUNTHURUTHU MURI OF THANNERMUKKOM SOUTH VILLAGE,
ALAPPUZHA - 688 524.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.(C) 906/2015

A P P E N D I X

PETITIONER'S EXHIBITS:

- EXT. P1 : COPY OF JUDGMENT IN O.S.177/09 DTD.22.1.11 OF SUB COURT, ALAPPUZHA.
- EXT. P2 : COPY OF APPEAL MEMORANDUM IN A.S.36/11 OF DISTRICT COURT, ALAPPUZHA.
- EXT. P3 : COPY OF I.A.830/14 IN A.S.36/11 OF DISTRICT COURT, ALAPPUZHA.
- EXT. P4 : COPY OF I.A.1241/14 DTD.28.10.14 IN O.S.177/2009 OF SUB COURT, CHERTHALA.
- EXT. P5 : COPY OF ORDER PASSED IN I.A.1241/2014 DTD.13.3.15 IN O.S.177/2009 OF SUB COURT, ALAPPUZHA.

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.906 OF 2015

Dated this the 31st day of March, 2015.

J U D G M E N T

The petitioner suffered a decree at the hands of Sub Court, Alappuzha in a specific performance suit as O.S.No.177/2009. He preferred an appeal before the lower appellate court. Since there was a submission by the counsel for the appellant that there is no instructions, the appeal was dismissed. Later on, the petitioner filed a petition to restore the appeal to file and since it was filed long after the prescribed period, a petition to condone the delay was also filed. While things stood so, the decree holder sought execution of decree and therefore the petitioner moved the execution court for staying the proceedings till the delay condonation petition is considered by the lower appellate court. The court below declined to grant relief in that regard holding that if the petitioner succeeds in the appeal, he has a remedy by way of restitution.

2. Learned counsel appearing for the petitioner pointed out that there was no justification for the court below to hold so. According to the petitioner, in case the delivery of property is effected, that will cause irreparable loss and injury to him. It is also pointed out that the delay condonation petition stands posted to 01.07.2015.

3. It will be sufficient if the court below is directed to take up the delay condonation petition in A.S.No.36/2011 forthwith and dispose of the same as expeditiously as possible.

This original petition is disposed of directing the District Court, Alappuzha to take up A.S.No.36/2011 and dispose of the delay condonation petition on the same as expeditiously as possible, at any rate, before summer recess begins. Till then, execution proceedings in O.S.No.177/2009 shall be kept in abeyance.

**P.BHAVADASAN
JUDGE**

smp