

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

OP(C).No.1006 of 2015 (O)

**I.A.NO.7672/2014,7673/2014 AND IA 498/2015 IN O.S.NO.160/2009 OF THE 2ND
ADDITIONAL MUNSIFF'S COURT,ERNAKULAM.**

PETITIONER:

**JAIBUNNISA BAI,AGED 72 YEARS,W/O.LATE SATTAR SAIT,
HOUSE NO.40/4073,JEWS STREET,KOVILVATTOM DESOM,
ERNAKULAM VILLAGE.**

**BY ADVS.SRI.K.V.JAYACHANDRAN
SRI.RAJU V.MATHEW**

RESPONDENT:

**GAFFER SAIT,S/O.NOOR MOHAMMED SAIT,
AGED 54 YEARS,B-4 JEWEL SAPRK,
PROVIDENCE ROAD,KOCHI-18.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08-04-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

O.P(C) NO.1006/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF RESTORATION PETITION AS I.A.NO.7672/2014 FILED BY THE RESPONDENT.

EXT.P2:TRUE COPY OF THE PETITION TO CONDONE DELAY AS I.A.NO.7673/2014 FILED BY THE RESPONDENT.

EXT.P3:TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER TO EXT.P1.

EXT.P4:TRUE COPY OF COUNTER AFFIDAVIT FILED BY THE PETITIONER TO EXT.P2.

EXT.P5:TRUE COPY OF THE PETITION TO CONDONE DELAY AS IA NO.498/2015 FILED BY THE RESPONDENT.

EXT.P6:TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER TO EXT.P5.

EXT.P7:TRUE COPY OF THE COMMON ORDER PASSED BY COURT BELOW ON 31.1.2015 IN EXT.P1,EXT.P2 AND EXT.P5 DISMISSING EXT.P2 AND ALLOWING EXT.P1 AND P5 APPLICATIONS.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

pk

P.BHAVADASAN, J.

O.P.(C) No. 1006 of 2015

Dated this the 08th day of April, 2015

J U D G M E N T

Under challenge is Ext.P7 order whereby the court below allowed I.A.No.7672/2014, 7673/2014 and I.A.No. 498/2015 in O.S.No. 160/2009 whereby the suit was restored to file condoning the delay in filing the petition for restoration of the suit.

2. The suit was one for recovery of possession, mandatory injunction and other consequential reliefs. The case stood listed to 06.02.2014. On that day, when the suit was taken up for trial, the plaintiff was absent and there was no representation on his behalf. Therefore the suit was dismissed for default. On 22.11.2014, two applications were filed namely I.A.No. 7672/2014 for restoration of the suit and also I.A.No. 7673/2014 for condonation of delay. The reason given for the delay in filing the restoration application was that the petitioner was not in station on the relevant date

and he could not make arrangements to restore the suit within the time. That was the reason given for the delay. He therefore sought for restoration of the suit.

3. The defendant in the suit filed a counter affidavit resisting the petition. It is contended that the delay calculated is wrong and the number of days delay was much more than what is stated in the petition. It is also pointed out that no sufficient cause had been shown to restore the suit and it is only a tactics adopted by the plaintiff to drag on the proceedings.

4. The court below though found that the reason given for restoration of the suit is not sufficient and not very convincing, felt that an opportunity ought to be given to the plaintiff to have his suit decided on merits and accordingly allowed the petition by the impugned order on payment of cost of ₹ 5,000/- to the defendant.

5. The learned counsel appearing for the petitioner assailed the above order and pointed out that when the

matter was taken up for hearing, the petitioner had pointed out that Exts.P1 and P2 were prepared much earlier and the explanation now given is totally unacceptable and unbelievable. It is pointed out by the petitioner that the court below, after hearing the matter, posted Ext.P1 for orders to 20.01.2015 and Ext.P2 for further hearing to 20.01.2015. It is pointed out that subsequently, another application was filed for condonation of delay and the earlier application was withdrawn. According to the learned counsel, the petition for restoration should have been moved with a proper petition to condone the delay and as that condition was not satisfied, the petition ought to have been dismissed.

6. The court below has noticed that the second application for condonation of delay shows the right number of days which was filed during the pendency of the earlier application and it was only after the latter application was filed that the earlier application was withdrawn. So,

technically speaking, it could not be said that there was no petition for condone the delay, though the number of days shown may be wrong. It is also true that the court below was extremely reluctant to accept the reason given for condonation of delay and in fact, found that it is not very convincing enough. But however, the court was of the opinion that in the interest of justice, an opportunity be given to the petitioner.

7. It may be noticed here that there is no allegation that the plaintiff in the suit was not interested in prosecuting the matter and it was yet another dilatory tactics adopted by the plaintiff to drag on the suit with ulterior motive. There was no previous history of any laches on his part to show that he was not really interested in prosecuting the suit but to keep it in court causing inconvenience to the defendant.

8. Even assuming that the court below was not convinced about the reason given for restoration, if the court below thought that in the interest of justice, an opportunity

ought to be given to the plaintiff to have the suit decided on merits, the court below could not be found fault with. The court below has exercised its jurisdiction in a particular manner and also found that any loss or injury caused to the defendant can be compensated by awarding cost. A sum of ₹ 5,000/- was awarded against the petitioner before the court below.

Under these circumstances, this Court finds no reason to interfere with the order of the court below. This petition is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge