

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

OP(C).No. 1014 of 2015 (O)

AGAINST THE ORDER IN OS 693/2008 of FIRST ADDL.M.C., NEYYATTINKARA
DATED 27.01.2015

PETITIONER/FIRST COUNTER AFFIDAVIT :

PRASANNAKUMARI AGED 61 YEARS
D/O.KRISHNA PILLAI, GEETHA BHAVAN, ARANKAMUGAL
ATHIYANNOOR DESOM, ATHIYANNOOR VILLAGE
THIRUVANANTHAPURAM.

BY ADVS.SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.
SRI.GOVIND PADMANAABHAN
SRI.AJIT G.ANJARLEKAR

RESPONDENTS/PETITIONER AND SECOND COUNTER PETITIONER :

1. CHANDRAKUMAR, AGED 43 YEARS,
S/O.PARAMESWARAN NAIR, CLASSIC NIVAS, ARANKAMUGAL
ATHIYANNOR DESOM, ATHIYANOOR VILLAGE
THIRUVANANTHAPURAM.
2. GEETHA, AGED 43 YEARS,
D/O.PRASANNAKUMARI, GEETHA BHAVAN, ARANKAMUGAL
ATHIYANNOOR DESOM, ATHIYANNOOR VILLAGE
THIRUVANANTHAPURAM.

R1 BY ADV.SRI.G.SUDHEER

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-10-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1.TRUE PHOTOCOPY OF IA NO.1215/2013 IN OS NO.693/2008 FILED BY THE 1ST RESPONDENT BEFORE THE COURT OF THE 1ST ADDL. MUNSIFF, NEYYATTINKARA.

EXT.P2.TRUE PHOTOCOPY OF IA NO.1217/2013 IN OS NO.693/2008 FILED BY THE 1ST RESPONDENT BEFORE THE COURT OF THE 1ST ADDL. MUNSIFF, NEYYATTINKARA.

EXT.P3.TRUE PHOTOCOPY OF IA NO.1216/2013 IN OS NO.693/2008 FILED BY THE 1ST RESPONDENT BEFORE THE COURT OF THE 1ST ADDL. MUNSIFF, NEYYATTINKARA.

EXT.P4.TRUE PHOTOCOPY OF IA NO.1218/2013 IN OS NO.693/2008 FILED BY THE 1ST RESPONDENT BEFORE THE COURT OF THE 1ST ADDL. MUNSIFF, NEYYATTINKARA.

EXT.P5.TRUE PHOTOCOPY OF OBJECTION DATED 11/10/2013 FILED BY THE PETITIONER IN OS NO.693/2008 BEFORE THE COURT OF THE 1ST ADDL. MUNSIFF, NEYYATTINKARA.

EXT.P6.TRUE PHOTOCOPY OF THE COMMON ORDER DATED 27/1/2015 OF THE COURT OF THE ADDL. MUNSIFF, NEYYATTINKARA IN INTERLOCUTORY APPLICATIONS NUMBERED 1215/2013, 1216/2013, 1217/2013 AND 1218/2013 IN OS NO.693/2008.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.ABRAHAM MATHEW, J.

O.P.(C).No.1014 of 2015

Dated this the 20th day of October, 2015

J U D G M E N T

Petitioner is the plaintiff in O.S.No.693 of 2008. The first respondent is the sole defendant. He made a counter claim to which the petitioner filed a written statement. The suit was decreed *ex-parte* on 05.01.2010. When the first respondent was served with a notice in the execution proceedings, he filed Exts.P1 to P4 applications to set aside the *ex-parte* decree, to condone the delay in filing it, to restore the counter claim which was dismissed for default and to condone the delay in filing the said application also. By Ext.P6 impugned order, the learned Munsiff has allowed all the applications.

2. Heard.

3. The first respondent was set *ex-parte* on 05.01.2010. The application to set aside the *ex-parte* decree and the other applications were filed in 2013. There was a delay of 1143 days. The ground for non-appearance was that the first respondent was out of station and he was under treatment as he had met with an accident. The learned Munsiff found that the first respondent could not explain the delay for the entire

period, but allowed the applications on condition that the first respondent will pay ₹3,500/- as cost.

4. The first respondent was set *ex-parte* on 05.01.2010. The relevant applications were filed on 19.03.2013. The documents relied on by him proved that he was under treatment from 17.06.2011 till 19.10.2012. There is no explanation for the delay from 05.01.2010 to 17.06.2011. That apart, the first respondent was served with notice in the execution proceedings in January 2013. He filed the relevant applications only on 19.03.2013. For this delay also there is no explanation. The learned Munsiff was wrong in allowing the applications as the first respondent could not explain the delay of a considerable period. So the impugned order is liable to be set aside.

In the result, this original petition is allowed. Ext.P6 order is set aside. The applications filed by the first respondent are dismissed.

Sd/-
K.ABRAHAM MATHEW, JUDGE