

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

OP(C).No. 1308 of 2015 (O)

(IA.NO.258/2015 IN OS.NO.119/2006 OF SUB COURT, NEDUMANGAD)

PETITIONER :

**G.BAIJU GOPINATH, S/O.GOPINATH,
SINDHU BHAVANAM, VENJARAMOODU P.O.,
NELLANADU VILLAGE.**

BY ADV. SRI.BASANT BALAJI

RESPONDENT :

**S.SUSHEELA, D/O.SUBHARA,
MARIATH PUTHEN VEEDU, VENJARAMMOODU,
TRIVANDRUM - 695 001.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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OP(C).No. 1308 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE JUDGMENT DATED 18.02.2014 IN
C.M.A.NO.49/2012 ON THE FILE OF THE ADDL. DISTRICT JUDGE II,
THIRUVANANTHAPURAM.
- EXHIBIT P2. TRUE COPY OF THE JUDGMENT DATED 30.01.2015 IN O.S.NO.119/2006
ON THE FILE OF THE SUB JUDGE NEDUMANGAD.
- EXHIBIT P3. TRUE COPY OF THE ORDER DATED 13.03.2015 IN I.A.NO.258/2015 IN
O.S.NO.119/2006 ON THE FILE OF THE SUB JUDGE NEDUMANGAD.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO JUDGE

sts

B. KEMAL PASHA, J.

.....
O.P.(C) No. 1308 of 2015
.....

Dated this the 11th day of August, 2015

J U D G M E N T

Heard the learned counsel for the petitioner

2. The petitioner is the defendant in O.S.No.119 of 2006 of the Subordinate Judge's Court, Nedumangad. The suit is one for money. Initially, the petitioner was declared *exparte* in the suit and an *exparte* decree was passed. An application under Order IX Rule 13 CPC was filed along with an application to get the delay condoned. The said applications were dismissed. Aggrieved by the said orders, the petitioner had preferred CMA No.49 of 2012 before the District Court, Thiruvananthapuram. The learned II Additional District Judge, Thiruvananthapuram allowed the

CMA on conditions. The petitioner was ordered to pay an amount of ₹2,500/- as costs on the CMA and also an amount of ₹5,000/- as costs for condoning the delay in filing the application under Order IX Rule 13 CPC. Apart from the above, the petitioner was ordered to deposit the decree amount before the court below. Everything as ordered by the appellate court were complied with by the petitioner. The petitioner paid an amount of ₹5,000/- as costs for getting the delay condoned and an amount of ₹2,500/- as costs to the CMA. Further, the petitioner had deposited the decree debt also before the court below.

3. Subsequently, the suit was tried and the same was dismissed. Thereafter, the petitioner filed I.A.No.258 of 2015 before the court below seeking the return of the decree amount deposited by the petitioner before the court below based on the orders passed by the appellate court in the CMA. Through Ext.P3 order, the court below has dismissed the said IA by finding that an appeal is pending on the

judgment and decree whereby the suit was dismissed and consequently the decree amount deposited by the petitioner as per the orders of the appellate court in the CMA could only be treated as a security for the amount involved in the suit.

4. All the observations and findings entered by the court below in Ext.P3 are unfounded and baseless. When the decree amount was ordered to be deposited by the petitioner as a condition for allowing the CMA, the court below is not justified in treating the said amount as security for the suit amount. Apart from all the above, the suit was dismissed after trial. In such a case, the court below ought to have returned the decree amount deposited by the petitioner before the court below. The dismissal of IA 258 of 2015 has resulted in substantial miscarriage of justice and therefore, Ext.P3 is liable to be set aside.

In the result, this Original Petition is allowed and Ext.P3 order passed by the court below stands set aside.

O.P.(C) 1308 of 2015

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The court below is directed to return the decree amount deposited by the petitioner before the court below in the suit.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge