

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(C).No. 4214 of 2013 (O)

**I.A NO. 1095/2011 & IA NO. 1096/2011 IN OS NO. 212/2006 OF SUB COURT,
PATHANAMTHITTA**

PETITIONER(S) :

- 1. VALSA PANICKER, AGED 65 YEARS
PUTHENPURAYIL HOUSE, VAKAYAR, KONNI VILLAGE.**
- 2. VIVIN PANICKER, AGED 32 YEARS
PUTHENPURAYIL HOIUSE, VAKAYAR, KONNI VILLAGE.**
- 3. VIPIN PANICKER, AGED 30 YEARS
PUTHENPURAYIL HOUSE, VAKAYAR, KONNI VILLAGE.**

**BY ADVS.SRI. MANOJ R. NAIR
SMT. SINDHU MANOJ
SMT. P.P. BLESSY MOL**

RESPONDENT(S) :

- 1. M/S. PUTHENPURAYIL BANKERS
VAKAYAR, KONNI
REPRESENTED BY ITS MANAGING PARTNER AND PARTNER
PIN-689 691.**
- 2. P.G. ANANDAN
PUTHENPURAYIL HOUSE, VAKAYAR,
KONNI VILLAGE, PIN-689 691.**
- 3. GEETHA ANANDAN
PUTHENPURAYIL HOUSE,
VAKAYAR, KONNI VILLAGE
PIN-689 691.**

**R2 BY ADVS. SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 4214 of 2013 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 : COPY OF THE PLAINT IN OS NO.212 OF 2006 ON THE FILES OF THE SUBORDINATE JUDGES COURT, PATHANAMTHITTA, DTD.26.10.2006.
- EXT. P2 : COPY OF THE WRITTEN STATEMENT IN OS NO.212 OF 2006 ON THE FILES OF THE SUBORDINATE JUDGES COURT, PATHANAMTHITTA, DTD. 7.8.2007.
- EXT. P3 : COPY OF THE ADDITIONAL WRITTEN STATEMENT IN OS NO.212/2006 ON THE FILES OF THE SUBORDINATE JUDGES COURT, PATHANAMTHITTA.
- EXT. P4 : COPY OF THE JUDGMENT IN OS NO.212 OF 2006 ON THE FILES OF THE SUBORDINATE JUDGES COURT, PATHANAMTHITTA DTD. 2.12.2009.
- EXT. P5 : COPY OF THE PETITION TO SET ASIDE THE EXPARTE DECREE, NUMBERED AS IA NO.1095 OF 2011, DTD.8.7.2011.
- EXT. P6 : COPY OF THE PETITION TO CONDONE THE DELAY IN FILING THE PETITION TO SET ASIDE THE EX-PARTE DECREE NUMBERED AS IA NO.1096 OF 2011.
- EXT. P7 : COPY OF THE ORDER DTD.4.7.2013 IN IA NO.1096 OF 2011 ON THE FILES OF THE SUBORDINATE JUDGES COURT, PATHANAMTHITTA.
- EXT. P8 : COPY OF THE ORDER DTD.4.7.2013 IN IA NO.1096 OF 2011 ON THE FILES OF THE SUBORDINATE JUDGES COURT, PATHANAMTHITTA.
- EXT. P9 : COPY OF THE ORDER DTD.11.9.2013 IN IA NO.1095/11 ON THE FILES OF THE SUBORDINATE JUDGES COURT, PATHANAMTHITTA.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

B.KEMAL PASHA, J.

.....
O.P.(C) No.4214 of 2013
.....

Dated this the 28th day of May, 2015

J U D G M E N T

O.S.No.212 of 2006 of the Subordinate Judge's Court, Pathanamthitta, was decreed *exparte*, at the first instance on 02.12.2009. It is a suit for money.

2. The decree was put in execution with a delay of 535 days. The defendants, who are the respondents herein, filed an IA under Order IX Rule 13 of the Code of Civil Procedure for getting the *exparte* decree set aside, along with another IA for getting the delay of 535 days in filing the I.A. under Order IX Rule 13 CPC, condoned. The court below, through Ext.P7 order, condoned the delay of 535 days on a cost of Rs.2,500/- to be paid to the plaintiffs and

on a cost of Rs.500 to be paid to the District Legal Services Authority. Based on Ext.P7 order, Ext.P8 order was also passed thereby setting aside the *exparte* decree. Exts.P7 and P8 orders are under challenge in this original petition.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondents. It is true that there was a delay of 535 days in filing the IA under Order IX Rule 13 CPC. It seems that the court below has passed Ext.P7 order detailing the said aspects. It cannot be said that Ext.P7 is not a speaking order. At the same time, there is substance in the argument that Ext.P8 is not a speaking order. The learned counsel for the respondent has pointed out that Ext.P8 has to be treated as a speaking order as the same is entirely based on Ext.P7 order. In Ext.P7, matters have been discussed. When a detailed order has been passed by way of Ext.P7, it cannot be expected that the court below had again to detail all those matters in Ext.P8 order also. Whatever it is, it is a suit of 2006. It is a stark

reality that the same is pending even now as a suit for money. In the interest of justice, this Court is of the view that the impugned order does not require any interference at all. The court below can be directed to dispose of the suit as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

Accordingly, this Original Petition is disposed of directing the court below to dispose of the suit, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge