

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

OP(C).No. 2158 of 2015 (O)

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AGAINST THE ORDER/JUDGMENT IN OS 320/2013 OF
SUB COURT, NORTH PARAVUR
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PETITIONER(S):

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K.K.JOLLY AGED 49 YEARS
S/O.KESAVAN, KOTTASSERY VEETIL, VELUPADAM.P.O.
VARANTHRAPPILLY VILLAGE, MUKUNDAPURAM TALUK
NOW RESIDING AT FLAT NO.IV/A, 'EMJAY TOWERS'
ANGAMALY.P.O., ANGAMALY.**

BY ADV. SRI.KILLIYOOR P.GOPALAKRISHNAN NAIR

RESPONDENT(S):

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NOBLE THOMAS, AGED 32 YEARS
S/O.STHANISLOVOSE, KALAMBADAM HOUSE, NEDUNGAPRA.P.O.
NEDUNGAPRA, VENGOOR VILLAGE, KUNNATHUNADU TALUK
ERNAKULAM DISTRICT PIN-683 542.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 2158 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1- TRUE COPY OF THE PLAINT IN O.S.NO.320/2013 ON THE FILES OF SUB COURT, NORTH PARAVOOR.

EXHIBIT-P2- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE THE COURT BELOW.

EXHIBIT-P3- TRUE TYPED COPY OF THE ORDER DATED 2.9.2015 OF SUB COURT, NORTH PARAVUR.

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K.ABRAHAM MATHEW, J

O.P.C.NO.2158 OF 2015

Dated this the 15th day of September, 2015

J U D G M E N T

Petitioner is the defendant in O.S.No.320 of 2013 on the file of Sub Court, North Paravur. The suit was for specific performance of an agreement for sale. Issues were framed on 18.08.2014. Immediately thereafter the parties were referred for mediation. There was a direction to pay the balance court fees on 26.09.2014 if the matter was not settled. But the mediation went on till 05.03.2015, on which day it was reported that the matter could not be settled. The court posted the case to 30.03.2015 for payment of the balance court fees. On that day it was submitted that the balance court fees was paid and the case was posted to 11.06.2015 for pre-trial steps. On that day the case was posted for trial in list to 02.09.2015. When the case was taken up for trial, the plaintiff was absent and it was noticed that the balance court fees had not been paid. The learned Sub Judge directed payment of the balance court fees within three days and posted the

case to 09.09.2015 for evidence. This order is challenged.

2. Heard the learned counsel for the petitioner and the respondent.

3. The learned counsel submits that the Sub Judge was not justified in granting time even without recording that there was sufficient reasons for not paying the balance court fees. I have no doubt about it. When the case was taken up on 02.09.2015, the court should have rejected the plaint on the ground that the balance court fees had not been paid. Another ground was also available for the disposal of the case. That was absence of the plaintiff. It is quite unfortunate that the Sub Judge did not notice the relevant provisions in the statutes. It is submitted that 03.09.2105 balance court fees was paid. The court fee is a matter between the plaintiff and the State though the defendant has a right to ask for rejection of the plaint on the ground of non payment of the balance court fees. But on the facts of the case I am satisfied that no prejudice has been caused to the petitioner/defendant. The inconvenience caused to him can be compensated by costs, which is fixed at Rs.5000/-.

In the result, this O.P. is disposed of with a direction to the respondent to pay Rs.5000/- (Rupees Five thousand only) as costs within seven days from today. If the costs is not paid, the O.P. will stand allowed and the plaint in O.S.No.320 of 2013 will stand rejected.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge