

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

OP(C).No. 2358 of 2015 (O)

**(IA.NO.7583/2013 AND IA.NO.7584/2013 IN OS.NO.372/2004 ON THE FILE OF IIIRD
ADDITIONAL MUNSIF COURT, THIRUVANANTHAPURAM)**

PETITIONER(S):

**YESODA AGED 60 YEARS
D/O.APPI, RAJESH BHAVAN, PARAVILA
KOVALAM PO, THIRUVANANTHAPURAM**

**BY ADVS.SRI.S.BALACHANDRAN (KULASEKHARAM)
SRI.V.R.GOPU**

RESPONDENT(S):

**CHITHRANGATHAN
S/O.CHELLAPPAN, PARAVILA, KOVALAM PO
THIRUVANANTHAPURAM 695527**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1: COPY OF THE DECREE IN OS.372/2014 OF THE THIRD ADDL MUNSIF COURT THIRUVANANTHAPURAM DATED 21.12.2004

EXHIBIT.P2: COPY OF THE NOTICE IN OS.372/2004 DATED 01.03.2004 OF THE MUNSIF COURT, THIRUVANANTHAPURAM ADDRESSED TO THE RESPONDENT ALONG WITH THE ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

EXHIBIT.P3: COPY OF THE IA.7584/2013 DATED 24.10.2013 FOR CONDONATION OF DELAY OF 3230 DAYS

EXHIBIT.P4: COPY OF THE IA.7583/2013 DTD.24.10.2013 FOR SETTING ASIDE THE EX PARTE DECREE IN OS.372/2004

EXHIBIT.P5: COPY OF THE OBJECTION FILED BY THE PETITIONER TO SET ASIDE THE EX PARTE DECREE IN OS.372/2004

EXHIBIT.P6: ATTESTED COPY OF THE ORDER IN IA.NO.7584/2013 IN OS.372/2004 DATED 08.06.2015

EXHIBIT.P7: ATTESTED COPY OF THE ORDER IN IA.NO.7583/2013 IN OS.NO.372/2004 DATED 08.06.2015

RESPONDENT(S)' EXHIBITS

NIL

R.AV

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PA to Judge

K.ABRAHAM MATHEW, J

O.P.(C).NO.2358 OF 2015

Dated this the 30th day of October 2015

J U D G M E N T

Petitioner is the plaintiff in OS.372 of 2004 of III Additional Munsiff, Thiruvananthapuram. The respondent/defendant was set ex parte. An ex parte decree was passed. The respondent filed an application to set aside the ex parte decree along with an application to condone the delay of 3230 days in filing the application to set aside the ex parte decree. The reason for non appearance is that she was not served with summons. By the impugned order the learned Munsiff has allowed it. This is questioned in this O.P.

2. Heard.

3. The learned Munsiff did not even post the application to condone the delay in filing the application to set aside the ex parte decree for enquiry. She allowed the applications stating that "the petitioner contends that he signed aforesaid documents without knowing that they are summons and notice in the suit" and the petitioner is aged and illiterate person and did not have knowledge about the

court procedure. I am sorry to say that the Munsiff did not even apply her mind to the affidavit filed by the respondent in support of the application. The specific case of the respondent was that she was not served with summons in the case. But the finding is that though she was served with summons, she did not understand its contents. Admittedly, the averment in the affidavit is false. The Munsiff should have taken notice of the fact that it is on the basis of the false averment the respondent prayed for the reliefs of setting aside the ex parte decree and condoning the delay in filing the application for it. The learned Munsiff has made out a new case for the respondent. I have no doubt that the impugned orders are patently illegal.

In the result, this O.P. is allowed. Exts.P6 and P7 orders are set aside.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

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PA to Judge