

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

RSA.No. 222 of 2012

**AS 74/2010 OF PRINCIPAL SUB COURT, THALASSERY DATED 31-05-2011
OS 125/2005 OF MUNSIFF'S COURT, KUTHUPARAMBA DATED 22-12-2009**

APPELLANT(S)/APPELLANTS/DEFENDANTS:

- 1. CHAIRMAN, KERALA STATE ELECTRICITY BOARD,
THIRUVANANTHAPURAM.**
- 2. ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL MAJOR SECTION,
KERALA STATE ELECTRICITY BOARD, KUTHUPARAMBA.**

BY ADV. SRI.K.M.SATHYANATHA MENON,SC

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**K.V.KARTHIYAYANI,
D/O. THALA, MANGHATTIDAM AMSOM,
KURUMBAKKAL DESOM,
THALASSERY TALUK, KANNUR DISTRICT -670 643.**

BY ADV. SRI.CIBI THOMAS

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

R.S.A.No.222 of 2012

Dated this the 8th day of December, 2015

JUDGMENT

The defendants in a suit for declaration and injunction are the appellants in this second appeal.

2. The first defendant is the Chairman of the Kerala State Electricity Board, ('the Board' for short), and the second defendant is the Assistant Executive Engineer of the Board attached to its Koothuparamba Electrical Major Section. The case of the plaintiff is that though she has not executed any minimum guarantee agreement with the Board, she was served with an invoice dated 23.3.2005 as if she had executed a minimum guarantee agreement with the Board. The plaintiff, therefore, prayed for a declaration that the invoice dated 23.3.2005 is illegal and consequential injunction restraining the defendants from realising electricity charges from her on that basis. The defendants contested the suit, contending among others, that the plaintiff has executed a minimum guarantee agreement and that therefore, the Board is entitled to realise the electricity charges

on that basis. The trial court accepted the case of the plaintiff and decreed the suit.

3. The defendants challenged the decision of the trial court in appeal along with a petition to condone the delay of 72 days in filing the appeal. I.A.No.1511 of 2010 was the interlocutory application filed by the defendants seeking orders to condone the delay in filing the appeal. I.A.No.1511 of 2010 was allowed by the appellate court on 12.4.2011 on condition that the appellants shall pay a sum of Rs.500/- by way of costs to the plaintiff on or before 31.5.2011. The defendants have not paid the costs ordered as per the said order. Instead, they filed I.A.No.1622 of 2011 seeking orders to enlarge the time fixed for payment of costs by one month. The appellate court dismissed I.A.No.1622 of 2011. Consequently, I.A.No.1511 of 2010 as also the appeal were dismissed. The defendants are aggrieved by the said decision of the appellate court.

4. Heard the learned counsel for the appellants as also the learned counsel for the respondent.

5. In so far as the defendants were prosecuting the appeal on behalf of a public body and not in their personal

capacity, according to me, the appellate court should have granted the enlargement of time requested for by the defendants as per I.A.No.1622 of 2011. As such, I deem it appropriate to condone the delay in filing the appeal preferred by the defendants before the lower appellate court, on terms.

In the result, the appeal is allowed, the delay in filing A.S.No.74 of 2010 on the file of the Sub Court, Thalassery is condoned on condition that the appellants shall pay a sum of Rs.5,000/- (Rupees five thousand only) by way of costs to the learned counsel for the respondent within two weeks from today. If the costs as directed is paid within the time stipulated, A.S.No.74 of 2010 shall stand restored to the file of the Sub Court, Thalassery. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm

Rs.5,000/- (Rupees five thousand only) has been paid to the counsel for the respondent within the stipulated time (vide memo c.f. No.470/2016) as per the direction in the judgment dated 08/12/2015 in R.S.A.No.222/2012.

Sd/-
Registrar Judicial