

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

RSA.No. 646 of 2012

A.S.NO.224/2009 OF SUB COURT, NEYYATTINKARA

O.S. 218/2004 OF FIRST ADDITIONAL MUNSIF COURT, NEYYATTINKARA

APPELLANT(S)/APPELLANTS/PLAINTIFFS :

- 1. G.SASIKUMAR, AGED 52 YEARS,
S/O.GOPALAN NADAR, RESIDING AT LEKSHMI VILASOM BUNGLOW,
IYTHIYOOR, BALARAMAPURAM, THIRUVANANTHAPURAM.**
- 2. ANANDHAM, AGED 44 YEARS,
W/O.SASIKUMAR, RESIDING AT DO. DO.**

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENT(S)/RESPONDENTS/DEFENDANTS :

- 1. RADHAKRISHNAN,
S/O.KUMARADAS, PANAYIL VEEDU, IYTHIYOOR,
BALARAMAPURAM- 695 001.**
- 2. JAGADAMMA,
W/O.KUMARADAS, RESIDING AT -DO- -DO-**
- 3. SUSEELA
D/O.JAGADAMMA, RESIDING AT DO. DO.**

**BY ADVS. SRI.L.MOHANAN
SMT.LIGEY ANTONY**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A: THE ORIGINAL MEDICAL CERTIFICATE ISSUED IN FAVOUR
OF THE PETITIONER BY THE LOCAL AYURVEDIC HOSPITAL.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

P.B.SURESH KUMAR, J.

R.S.A.No.646 of 2012

Dated this the 30th day of September, 2015

JUDGMENT

The plaintiffs in the suit are the appellants. The suit was for injunction. The trial court dismissed the suit. The plaintiffs challenged the decision of the trial court in appeal. There was, however, a delay of 684 days in filing the appeal. The plaintiffs, therefore, filed I.A.No.2311 of 2009 seeking orders to condone the said delay of 684 days in filing the appeal. The appellate court dismissed I.A.No.2311 of 2009 and consequently, dismissed the appeal. The plaintiffs who are aggrieved by the concurrent decisions of the courts below have thus come up in this second appeal.

2. Heard the learned counsel for the appellants as also the learned counsel for the respondents.

3. As noticed above, there was no adjudication of the appeal preferred by the appellants on merits. The appeal was dismissed consequent on the dismissal of the application filed

seeking orders to condone the delay in filing the appeal. As such, the only question to be decided is as to whether the appellate court was justified in declining its jurisdiction to condone the delay in filing the appeal. The reason stated by the appellants in the affidavit filed in support of I.A.No.2311 of 2009 was that the first appellant was working in a construction site in the State of Gujarat from January 2008 onwards and it is on account of the said reason that he could not make necessary arrangements for filing the appeal on time. The appellate court took the view that the said reason stated by the appellants is not a ground to justify the long delay of 684 days in filing the appeal. Though I agree with the said view taken by the appellate court, having regard to the facts and circumstances of the case, I deem it appropriate to condone the delay in filing the appeal on terms so as to afford the appellants an opportunity to have their matter decided on merits.

In the result, the appeal is allowed. The order on

I.A.No.2311 of 2009 in A.S.No.224 of 2009 is set aside and the delay in filing the appeal is condoned on condition that the appellants shall pay a sum of Rs.2,500/- (Rupees two thousand and five hundred only) to the learned counsel for the respondents in this appeal by way of costs within two weeks from the date of receipt of a copy of this judgment. If the costs as directed above is paid, A.S.No.224 of 2009 will stand restored to file.

P.B.SURESH KUMAR, JUDGE.

smm