

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

RP.No. 75 of 2015 IN FAO.7/2015

AGAINST THE JUDGMENT IN FAO 7/2015 of HIGH COURT OF KERALA
DATED 13-01-2015

REVIEW PETITIONER/APPELLANT:

B.P.KUMARAN AGED 69 YEARS
S/O. KOTTAN, RESIDING AT PERINKONNE, P.O.CHENGALAYI
(VIA) SREEKANDAPURAM, KANNUR DISTRICT.

BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA
K.SHANTHI
SMT.ANUPAMA JOHNY
SRI.M.MOHAMMED RAPHY

RESPONDENTS/RESPONDENTS:

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1. B.P.JANAKI, AGED 66 YEARS
D/O. KOTTAN, PUTHIYAPURAYIL HOUSE, CHELLERI
VALAVIL P.O., CHERI, KANNUR DISTRICT-670621.
 2. B.P.SREEDHARAN, AGED 61 YEARS
S/O. KOTTAN, PANIYORA CHEVON HOUSE
P.O. UNIVERSITY CAMPUS, MANGAD
KANNUR DISTRICT-670621.
 3. B.P. CHANDRAMATHI, AGED 59 YEARS
D/O. KOTTAN, RESIDING AT KOTTUR, P.O.SREEKANDAPURAM
KANNUR DISTRICT-670631.
 4. B.P.SANTHAKUMARI, AGED 53 YEARS
D/O. KOTTAN, RESIDING AT PANIYORA CHEVON HOUSE
P.O. UNIVERSITY CAMPUS, MANGAD
KANNUR DISTRICT-670621.
 5. B.P.SHYAMALAVALLI, AGED 49 YEARS
D/O. KOTTAN, KARAKANDY HOUSE, KOLANTHA
P.O. MALAPATTAM, KANNUR DISTRICT-670631.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 27-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

R.P. No.75 of 2015

IN

F.A.O. No.7 of 2015

Dated this the 27th day of February, 2015

ORDER

P.N.Ravindran, J.

The prayer in this review petition is to review and recall the judgment delivered by us on 13.1.2015 dismissing F.A.O.No.7 of 2015, an appeal filed by the appellant to set aside the common order passed by the court below dismissing the application filed by the appellant to set aside the ex-parte decree passed in the suit and to condone delay in filing the said application. The main ground raised in the review petition is that the appeal was disposed of without considering the copy of the medical certificate and copies of two Wills produced by the appellant. It is also contended that there was no occasion for the appellant to produce the said document on an earlier occasion as the suit was decreed before the written statement was filed.

2. As regards the second contention, we are of the opinion that the said contention is liable to be rejected as one made without any bonafides. The suit was instituted in February 2012. When the suit was called on for hearing after service of summons on the

appellant/defendant on 15.6.2012, as he was not present and had not filed a written statement, he was set ex-parte. Later, an ex-parte decree was passed on 26.6.2012. The appellant thereupon filed I.A.No.1281 of 2012 to set aside the ex-parte decree passed in the suit along with I.A.No.1280 of 2012 to condone the delay in filing the former application. The said applications were heard and allowed by order passed on 22.2.2013 and the ex-parte decree passed in the suit was set aside. Even thereafter the appellant did not file a written statement though he had entered appearance through counsel. When the suit was called on for hearing on 4.3.2013, learned counsel appearing for the appellant reported no instructions. Thereupon, the suit was again decreed ex-parte on 20.3.2013. Therefore, the contention that the appellant did not get an opportunity to file a written statement cannot in our opinion be accepted. If he had serious contentions to urge and he was serious about participating in the proceedings, he could have filed a written statement after the ex-parte decree passed in the first instance set aside by order passed on 22.2.2013 on I.A.Nos.1281 of 2012 and 1280 of 2012. We therefore find no merit or substance in the contention of the appellant that there was no occasion for him to file a written statement and therefore, the documents now pressed into service should be relied on. Further, he

has no case that the documents were not known to him or were not available with him when I.A.Nos.1281 of 2012 and 1280 of 2012 were filed. The other contention that the documents produced along with the appeal was not considered by us also does not merit interference. On going through the records, we find that the appellant had filed an application in this Court on 13.1.2015 with a prayer to receive photostat copies of two documents and a medical certificate. The said application was returned as defective on the very same day. They were represented only on 20.1.2015. The appeal, as stated earlier, was disposed of on 13.1.2015. The said application has not so far been numbered in view of the order passed by a Division Bench of this Court on 5.10.2013 in R.F.A. No.45 of 2008 & I.A.No.1912 of 2013 and the order passed by a learned single Judge of this Court on 4.7.2006 on I.A. No.3295 of 2005 in M.A.C.A. No.1687 of 2005 wherein it has been held that uncertified certified photostat copies cannot be relied on and that the application filed under section 151 of the Code of Civil Procedure cannot be treated as a universal remedy for all maladies in procedure. It cannot therefore be said that the appeal was disposed of without considering the documents produced in this Court. In such circumstances as the documents now pressed into service are not part of the records, we cannot look into it for the

purpose of deciding whether there is any merit or substance in the plea now put forward by the petitioner. Though the learned counsel appearing for the petitioner contended that he was disabled on medical grounds from filing written statement, no such case was put forward in either of the two sets of applications filed by him to set aside the ex-parte decree passed in the suit. As stated earlier, the appellant has no case that he was unaware of the documents which now he relies on. We therefore find no good grounds to entertain review petition. The review petition fails and it is accordingly dismissed.

**P.N.RAVINDRAN,
(JUDGE)**

**ANIL K.NARENDRA,
(JUDGE)**

vps