

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

RFA.No. 134 of 2014 ()  
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AGAINST THE JUDGMENT IN OS 1419/2008 of II ADDL.SUB COURT, THRISSUR  
DATED 17-08-2011

APPELLANT/PLAINTIFF:  
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ABDUL RAHIMAN AGED 51 YEARS  
S/O. MUHAMMED, KALLIPARAMBIL HOUSE, BRAND WOOD  
7-A, SKYLINE, SAW MILL ROAD  
KOORKENCHERY VILLAGE, THRISSUR DISTRICT

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT(S)/IMPLEADED LEGAL REPRESENTATIVES OF DECEASED DEFENDANT:  
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1. PHILOMINA, AGED 60,  
W/O. LATE THARAYIL SUNNY, VADAKKEVETTUVAZHY ANGADI  
ARANATTUKARA ANGADI, ARANATTUKARA, POOTHOLE POST  
THRISSUR DISTRICT, PIN 680 004
2. JOHN V. SUNNY, AGED 40,  
S/O. LATE THARAYIL SUNNY,  
DO. DO.
3. SEENA V. SUNNY, AGED 35 YEARS  
D/O. LATE THARAYIL SUNNY, DO. DO.
4. NEENA V. SUNNY, AGED 32 YEARS  
D/O. LATE THARAYIL SUNNY, DO. DO.

BY ADV. SRI.K.R. AVINASH (KUNNATH)  
ADV. SRI. ABDUL RAOOF PALLIPATH

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON  
15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.**

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**R.F.A.No.134 OF 2014**  
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**DATED THIS THE 15<sup>th</sup> DAY OF JANUARY, 2015**

**JUDGMENT**

**P.N.RAVINDRAN, J.**

We have by order passed today, dismissed C.M.Application No.130 of 2014 filed by the appellant to condone the delay of 645 days in filing the appeal. Consequently, the appeal is dismissed as barred by limitation.

Sd/-  
**P.N.RAVINDRAN,  
JUDGE**

Sd/-  
**ANIL K.NARENDRAN,  
JUDGE**

dsn

**P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.**

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**C.M.Application No.130 OF 2014**  
**in**  
**R.F.A.No.134 OF 2014**  
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**DATED THIS THE 15<sup>th</sup> DAY OF JANUARY, 2015**

**ORDER**

**P.N.RAVINDRAN, J.**

This is an application to condone the delay of 645 days in filing R.F.A.No.134 of 2014.

2. R.F.A.No.134 of 2014 arises from the judgment and decree passed by the Court of the Second Additional Sub Judge of Thrissur in O.S.No.1419 of 2008. The appellant is the plaintiff and the respondents are the legal heirs of the defendant therein. The suit instituted by the appellant/plaintiff for specific performance of agreement for sale was decreed by allowing him to realise the sum of ₹1,10,000/- with interest on the principal sum of ₹1 lakh @ 6% p.a. from the date of suit, till realisation. The plaintiff was also held entitled to costs. The appellant has in this appeal challenged the said decree and judgment and sought specific performance.

3. The certified copy of the judgment and decree produced in the instant appeal disclose that they were applied for on 24.8.2011,

that the stamp papers were called for on 15.10.2011 and produced on 19.10.2011, that the certified copy was ready on 18.11.2011, that the date fixed for appearance to receive the certified copy was on 22.11.2011 and that the certified copy was delivered over to the learned counsel appearing for the appellant in the court below on 21.11.2011. Computed with reference to the endorsements in the aforesaid certified copy, the appeal ought to have been filed in this Court on or before 12.2.2012. The instant appeal was filed on 19.11.2013 with a delay of 645 days.

4. The delay of 645 days is explained in paras 2 and 3 of the affidavit filed in support of the application to condone the delay. The specific averment in the affidavit is to the effect that after the suit was decreed, the defendant filed I.A.No.11001 of 2011 seeking a review of the direction regarding payment of costs, that the said application was disallowed, that the sole defendant thereafter passed away, that thereupon his legal heirs filed C.R.P.No.251 of 2012 in this Court challenging the order passed by the trial court dismissing I.A.No.11001 of 2011, that the said civil revision petition was heard and allowed by this Court by order passed on 15.11.2012, the order passed by the trial court was set aside and the trial court was directed to trim down the costs proportionate to the decree for return of advance, that

seeking a review of the said order, the appellant filed R.P.No.433 of 2013, but it was dismissed by order passed on 12.6.2013, that as a result thereof, notwithstanding the fact that an amount of ₹3,18,400/- was paid by the appellant towards court fee, he was found entitled only to refund of the sum of ₹1 lakh together with interest and proportionate costs. He has also averred that it was because of the death of the sole of defendant, he was reluctant to file an appeal, but as the legal heirs of the defendant are not appreciating his stand, unless he is allowed to prosecute the appeal, he will be put to serious prejudice.

5. When the application was called for hearing today, learned counsel appearing for the appellant was not present. There was also no representation on his behalf. Learned counsel appearing for the respondents submitted that none of the reasons stated in the affidavit filed in the instant application constitute sufficient cause for condoning the delay of 645 days in filing the appeal. The learned counsel contended that the certified copy of the judgment was received by the learned counsel appearing for the appellant on 21.11.2011 and the appellant has no case that he was prevented by any reason from filing the appeal in time. It was submitted that the mere fact that the defendant had filed an application in the trial court to scale down the

costs and had thereafter moved this Court by filing a civil revision petition cannot be a ground to hold that the appellant was prevented by sufficient cause from filing the appeal in time. The learned counsel for the respondents also contended that I.A.No.11001 of 2011 was dismissed by the trial court by order passed on 23.3.2012, that C.R.P.No.251 of 2012 filed in this Court was heard and allowed by order passed on 15.11.2012 after notice to the appellant, that he filed R.P.No.433 of 2013 in this Court on 6.6.2013 and it was dismissed by order passed on 12.6.2013 and therefore, he cannot be heard to contend that it was on account of the institution of C.R.P.No.251 of 2012 and R.P.No.433 of 2013 that he was prevented from filing the appeal in time.

5. We have considered the submissions made at the Bar by the learned counsel for the respondents. We have also gone through the pleadings and the materials, including the Judges' papers in C.R.P.No.251 of 2012 and R.P.No.433 of 2013. The records disclose that after the suit was decreed with costs allowing the plaintiff to realise the sum of ₹1,10,000/- with interest @ 6% p.a. on the principal sum of ₹ 1,00,000/- and costs of the suit, the plaintiff's counsel had filed a memo claiming the sum of ₹3,24,990/- as costs. The said amount consisted of the sum of ₹3,18,400/- paid by way of court fee.

After the costs was certified, the defendants filed I.A.No.11001 of 2011 seeking a review of the order certifying the costs. That application was rejected on the ground that it is belated and also on the merits, by order passed on 23.3.2012. The judgment debtor passed away shortly thereafter, on 26.3.2012. His legal heirs thereupon filed C.R.P.No.251 of 2012 before this Court challenging the said order. The said civil revision petition was admitted and notice ordered to the respondent (the appellant herein) on 25.6.2012. The notice issued from this Court with the hearing fixed as 13.7.2012 was served on him. He did not however enter appearance. When C.R.P.No.251 of 2012 came up for hearing before the learned single Judge on 15.11.2012 it was heard and allowed by order passed on the same day. By that order, this Court directed the trial court to trim down the costs proportionate to the decree for return of the amount paid as advance. The appellant thereupon filed R.P.No.433 of 2013 on 6.6.2013 seeking a review of the said order. The review petition was heard and dismissed by order passed on 12.6.2013. It was only five months thereafter that the instant appeal was filed with a delay of 645 days. In our opinion, the filing of I.A.No.11001 of 2011 by the defendant or C.R.P.No.251 of 2012 by his legal representatives did not stand in the way of the appellant from challenging the decree declining

specific performance of the agreement. Apart from merely stating that he did not rush with the filing of an appeal on account of the death of the defendant, the appellant has not given any reason as to why he did not file an appeal within the stipulated time. As stated earlier, the sole defendant passed away on 26.3.2012. The impugned judgment was delivered on 17.8.2011. The appellant had in the meanwhile applied for certified copy of the judgment and decree on 21.11.2011. Even as on the date of death of the sole defendant, the appeal was barred by limitation. It was only on 19.11.2013, nearly two years after the appellant applied for and obtained the certified copy of the judgment and decree that he has come forward with the appeal. In the light of the facts stated above, we are not satisfied that the appellant has shown sufficient cause for the long delay of 645 days in filing the appeal. The application is in our opinion without merit. It fails and is accordingly dismissed.

**P.N.RAVINDRAN,  
JUDGE**

**ANIL K.NARENDRA,  
JUDGE**

dsn