

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

RP.No. 320 of 2015

OP(C) 263/2015, DATED 19-02-2015

PETITIONER(S)/PETITIONER IN OP 263/2015:

**BALACHANDRAN NAIR,
S/O. KRISHNA PILLAI, T.C.17/527, KOLLARA VEEDU
CHADIYARA, POOJAPPURA,
SASTHAMANGALAM VILLAGE, THIRUVANANTHAPURAM.**

BY ADV. SRI.S.SOMAN

RESPONDENT(S):

- 1. SIMON, S/O. YESU VAIDYAN
ANIL KOTTAGE, KIZHAKKE BUNGALOW LANE,
THEKKUMKARA MURI FROM ANIL COTTAGE, MANCHA
NEDUMANGAD VILLAGE, PIN-695 541.**
- 2. LEELA SIMON,
W/O.SIMON, ANIL KOTTAGE, KIZHAKKE BUNGALOW LANE
THEKKUMKARA MURI FROM ANIL COTTAGE, MANCHA
NEDUMANGAD VILLAGE, PIN-695 541.**

**BY ADV.SRI. ANILKUMAR M.SIVARAMAN
SRI.G.S.REGHUNATH**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 31-03-2015,
ALONG WITH RP.323/2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

PJ

P. BHAVADASAN, J.

R.P. No. 320 of 2015 in
O.P.(C) No.263 of 2015 &
R.P. No. 323 of 2015 in
O.P.(C). No. 405 of 2015

Dated this the 31st day of March, 2015.

ORDER

These review petitions have been filed seeking review of the judgment dated 19.2.2015 in O.P.(C) Nos. 263 and 405 of 2015.

2. The challenge in the Original Petitions was that after having pronounced the judgment, the court below was not competent to re-open the hearing of the appeal allowing one of the parties to address the court. The more pointed argument was that a petition under Order XLI Rule 19 of the Code of Civil Procedure will not lie. There was not even a proper petition before the court below and the court below was not justified in rehearing the appeal. In support of his contention, the petitioner had relied on the entries in the B Diary and pointed out that the matter was posted for

hearing. The matter was heard on several occasions and it is not as if the parties were not heard in the matter. Whatever that be, according to the learned counsel, it was not possible for the court below in a petition under Order 41 Rule 19 of the Code to re-open the matter.

3. This Court considered the matter in considerable detail and finding that going by the B Diary produced by the parties, at one point of time the matter was re-opened for hearing by the court below and that on the next posting date the entry showed that the appellant alone was heard and the respondent was not heard as his counsel was not present. Since the court had not heard the respondents at the time of re-hearing of the appeal, the respondent filed a petition under Order 41 Rule 19 of the Code of Civil Procedure to hear him also. The court below, realizing the gravity of the situation, allowed the petition and re-opened the appeal for hearing.

4. The learned counsel for the respondents in O.P. © 263 of 2015 pointed out that it is true that a petition under Order XLI Rule 19 of the Code is incompetent. But the averments in the affidavit in support of the petition to re-open the matter clearly show that the petition fall within Order XLI Rule 21 of the Code and the mere quoting of a wrong provision may not be a ground to deny justice to the parties.

5. The learned counsel for the petitioner in O.P. ©. 263 of 2015 in support of his case relied on the decision reported in **Arjun Singh v. Mohindra Kumar** (AIR 1964 SC 993). This Court elaborately referred to the various entries in the B Diary produced before this Court and accepted the contention of the petitioner that the petition under Order XLI Rule 19 of the Code was not maintainable. However, this Court also found that going by the averments in the affidavit, it actually fall within Order XLI Rule 21 of the Code and merely because a wrong provision had been

shown, the court below could not be found fault with for having re-opened the matter for hearing. By the time when the Original Petitions were taken up, the lower court had reheard the appeal and that also weighed with this Court at the relevant time. This Court felt that it will only delay the proceedings by sending back the matter for filing proper petitions and this Court felt that since the matter has already been heard by the court below, nothing survives for consideration, and accepted the stand of the court below to rehear the matter.

6. In these review petitions, counsel in an intemperate and objectionable language, which is quite unbecoming of a counsel, exception is taken to the judgment of this Court.

7. Reliance is placed on the decision reported in **Shiv Shakti Co-Op. Housing Society, Nagpur v. Swaraj Developers** ((2003) 6 SCC 659). It is contended on behalf of the review petitioner that the decree could not have

been set aside in the manner as it had been done. It is further reiterated that the appeals were fully heard on merits and a common judgment was passed on 3.9.2014. It is also contended that without condoning the delay, the lower court has passed the judgment.

8. It is quite unfortunate that the following statements have been made in the review petitions:

"J. Without condoning the delay petition and ignoring all the procedure formalities, the lower appellate court committed grave illegality and irregularity, which this Hon'ble Court assuming the role of an appellate court, invoked short cut method to set aside decree passed on merit imparting irreparable injustice to the petitioner. Totally, this court was grid up its own loins to impart injustice to the petitioner.

L. This is the typical case in which the highest Court of the land which is to act as a role model having supervisory control over subordinate Court and administer justice in an exemplary manner acted like a goal keeper turned poacher imparting grave injustice to the petitioner."

9. One can understand the moral indignation of the counsel who is unsuccessful in the case conducted by him. But to react in a manner has already been referred to was quite uncalled for, unjustified and shows the immaturity of the lawyer of this court. It is a fit case where contempt proceedings needs to be initiated against the person concerned. But judicial propriety and wisdom demands this Court to restrain itself from doing so. No grounds are made out to review the judgment in the Original Petitions.

These Review Petitions are without merits and they are accordingly dismissed.

sb.

P. BHAVADASAN,
JUDGE