

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

RSA.No. 290 of 2015 ()

AGAINST THE JUDGMENT AND DECREE IN AS 21/2011 of ADDL. DISTRICT & SESSIONS COURT, VADAKARA DATED 31-05-2014.

AGAINST THE JUDGMENT AND DECREE IN OS 308/2010 of MUNSIF COURT, NADAPURAM DATED 05-02-2011.

APPELLANT/APPELLANT/PLAINTIFF :

**RAGHAVAN, AGED 48 YEARS,
S/O.CHATHU, AMBIDANDI MEETHAL HOUSE, SWASTHAM,
VISHNUMANGALAM (P.O.), EYYANKODE AMSOM, CHIYYUR DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.B.ARUNKUMAR.
SRI.RANJIT BABU.**

RESPONDENT/RESPONDENT/DEFENDANT :

**RAJAN, AGED 45 YEARS,
S/O.POKKAN, KAKKAMVELLIMMAL HOUSE, THUNERI (P.O.),
THUNERI AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT 673 506.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.290 of 2015

Dated this the 10th day of August, 2015.

J U D G M E N T

The saying “stranger than fiction” is a cliché. It applies to the vagaries of life. But it shall never ever be applied in the adjudicatory process.

2. A disturbing question comes up for consideration in this second appeal. Can an appeal, which was filed belatedly before the lower appellate court and the delay was condoned as the appellant paid costs to the opposite party in obedience to the order of the court, be dismissed finding that the delay in filing the appeal was not properly explained. Instead of reproducing the reasoning of the lower appellate court, I shall reproduce the exact words in the lower appellate court's judgment :

“ 4. The law is very clear. The lethargic attitude of the plaintiff appellant is very

specific in this case. They are having a two pronged case in appeal that the date was wrongly taken and the second the plaintiff was having back pain. There is no specific reason for 120 days delay in preferring the appeal. As per the law they could have file review petition before the lower court to get the suit restored. Even now they have not paid the court fee. There is nothing before this court to interfere with the order of the learned Munsiff. I find that there is no reason to interfere with the order of learned Munsiff. Hence the appeal is dismissed.”

3. Heard the learned counsel for the appellant Sri.K.B.Arunkumar. In spite of serving notice on the respondent he did not choose to enter appearance and contest the case.

4. Facts in short relevant for disposal of the appeal is as follows :

Appellant filed a suit for recovery of money before the trial court. The suit was posted for paying balance court fee. It was not paid in time. The plaint was rejected for non payment of balance court fee under Order VII Rule 11 (c) of the C.P.C. According to the appellant, the posting date of the case was wrongly noted by the advocate clerk as 15-02-2011 instead of 05-02-2011 and for that reason the court fee could not be paid in time. Aggrieved by the rejection of the plaint, the appellant preferred an appeal before the learned Additional District Judge, Vatakara as Appeal Suit No.21/2011. The appeal was filed with a delay of 120 days. After hearing both sides, the delay was condoned by the lower appellate court on terms and the appellant paid costs of Rs.1,000/- to the respondent as ordered by the court. Thereafter, the appeal was taken up for hearing by

the lower appellate court and in that matter the above said observations were made. None of the reasons stated by the lower court appeals to ordinary prudence. There is no logic in thinking that a person who defaulted paying balance court fee cannot suffer back ache. The observation that there is no reason for 120 days delay in filing the appeal is illegal, illogical and self contradictory in the facts of this case. Whether a review or appeal is to be filed is a matter completely left to the party, when he has a choice between the two. When a plaint is rejected, how can a plaintiff pay court fee thereafter ? So, the observation that the plaintiff had not paid court fee during the pendency of appeal is nothing but complete lack of understanding of the practical aspects. The strange procedure adopted by the lower appellate court does not have the backing of any law. The reasoning of the court below is not only illegal but also perverse. After condoning delay in filing the appeal, the court

below should have considered the matter on merit.

Therefore, the impugned judgment of the court below is legally unsustainable and it deserves to be set aside. So, the appeal is allowed. The impugned judgments of the courts below are set aside. The appellant shall pay the balance court fee within a period of one month from today and in that event the trial court shall receive the plaint back to file and proceed with the matter in accordance with law. The appellant is directed to appear before the trial court on 10th September, 2015 and pay balance court fee on or before that date.

All pending interlocutory applications will stand dismissed.

**A.HARIPRASAD,
JUDGE.**

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