

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

RSA.No. 410 of 2014 ()

**(AGAINST THE JUDGMENT AND DRCREE IN AS.NO.30/2013 OF THE SUB COURT,
SULTHAN BATHERY DATED 7/11/2013)**

**(AGAINST THE JUDGMENT IN OS.NO. 534/2010 OF MUNSIF MAGISTRATE,
SULTHAN BATHERI DATED 11-03-2013)**

APPELLANT/APPELLANT/DEFENDANT :

**K.M.THANKAPPAN,AGED 56 YEARS,
S/O.MADHAVAN, KAKJASSERI HOUSE, CHOOTHUPARA,
POOTHADI VILLAGE, S.BATHERY TALUK.**

BY ADV. SRI.S.M.PRASANTH

RESPONDENT(S)/RESPONDENTS/PLAINTIFF/DEFENDANT :

- 1. SOUTH MALABAR GRAMIN BANK,
S.BATHERY, BRANCH, REP BY ITS MANAGER SRI GEORGE THOMAS,
AGED 53 YEARS, S/O.JACOB,KUTHUR SHOWNDALE,
NEAR LIONS HALL, KALPETTA VILLAGE,
VYTHIRI TALUK-673 121**
- 2. DAMODHARAN, AGED 74 YEARS,
THADATHIL HOUSE, THELAMPETTA, MOOLANKAVU,
S.BATHERY, PIN-673 124**
- 3. SMT. SEENA,W/O.LATE SAJEEVAN,AGED 40 YEARS,
THADATHIL HOUSE, THELAMPETTA,
MOOLANKAVU, S BATHERY-673 124**

**R1 BY ADV. SRI.T.R.RAVI, SC, S.MALABAR G. BANK
R2 BY ADVS. SRI.M.PASHOK KUMAR
SRI.P.C.GOPINATH**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

R.S.A.No.410 of 2014

Dated this the 27th day of May, 2015

JUDGMENT

The second defendant in a suit for realization of money is the appellant. The first respondent is the plaintiff in the suit.

2. The suit was instituted alleging that the the first defendant, the predecessor of respondents 2 and 3, availed a loan from the first respondent bank and that the appellant is a guarantor to the said loan transaction. According to the plaintiff, since the loan was not repaid by the first defendant, they are entitled to recover the same from him and also from the appellant. During the pendency of the suit, the first defendant died. On his death, respondent Nos.2 and 3 were impleaded as additional defendant Nos.3 and 4 in the suit.

3. The trial court decreed the suit as against the

appellant as he was a guarantor to the loan transaction. As regards the liability of additional defendant Nos.3 and 4, the court held that there is no pleading in the suit, in so far as their liability is concerned, and therefore, no decree can be passed against them. The appellant has challenged the decision of the trial court in appeal. There was a delay of 129 days in filing the appeal. Consequently, I.A No.1084 of 2013 was also filed in the appeal seeking orders to condone the said delay in filing the appeal. The appellate court found that sufficient cause was not shown by the appellant to justify the delay of 129 days in filing the appeal and consequently dismissed I.A No.1084 of 2013. In the light of the decision in I.A No.1084 of 2013, the appeal was also dismissed. The appellant is aggrieved by the said decision of the appellate court.

4. The appellate court found that the averments made in the affidavit filed in support of the application to condone the delay are too vague and sketchy to justify the long delay

of 129 days in filing the appeal and it is on that view of the matter, the delay in filing the appeal was not condoned. I do not find any reason to interfere with the decision of the appellate court.

5. The learned counsel for the appellant submitted that the appellant being a guarantor to the loan availed by the deceased first defendant and as such, after liquidating the liability, he is entitled to recover the loan amount from respondent Nos.2 and 3, by proceeding against the assets, if any, inherited by them from the deceased first defendant. According to the learned counsel, the finding rendered by the trial court that no decree can be passed against respondents 2 and 3 would affect the right of the appellant to proceed against respondents 2 and 3.

6. I have meticulously perused the decision of the trial court. I do not find any reason to hold that the decision of the trial court would stand in the way of the appellant proceeding against the assets of the deceased first

defendant for recovery of the debt. The trial court has only said that in the absence of pleading regarding the liability of additional defendant Nos. 3 and 4, it is unable to pass a decree against them. The said finding will not affect the right, if any, of the appellant to proceed against additional defendant Nos.3 and 4, if they have inherited any assets from the deceased first defendant.

There is therefore, no merits in the Second Appeal and the same is, accordingly, dismissed. All the Interlocutory Applications in this Appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm