

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 25710 of 2010 (O)

AGAINST THE ORDER IN I.A.NO.4345/2009 IN O.S.NO. 692/1981 of III ADDITIONAL
MUNSIFF COURT, THIRUVANANTHAPURAM DATED 24.09.2010

PETITIONER(S)/DEFENDANTS 2 AND 3:

1. VISWESWARAN, T.C.40/998, VILAYIL,
KURIATHI, MANACAUD VILLAGE, THIRUVANANTHAPURAM.
- * 2. SIVARJANASSARI, NADUVATHUVILA,
RAJBHAVAN, KARAKKAMANDAPAM, NEMOM
VILLAGE, THIRUVANANTHAPURAM. (DIED. LRS. IMPEADED)

ADDL.PETITIONERS IMPEADED:

3. J.KOLAMMAL, D/O.JAGADAMMAL, RAJ VIHAR,
KARAKAMANDAPOM, NEMOM P.O.,
THIRUVANANTHAPURAM.
4. K.S.GEETHA, AGED 55 YEARS, W/O.UPENDRAN ASARI,
RAJ VIHAR,
KARAKAMANDAPOM, NEMOM P.O.,
THIRUVANANTHAPURAM.
5. K.S.SUDHHA, AGED 50 YEARS, W/O.SURENDRAN,
RAJ VIHAR,
KARAKAMANDAPOM, NEMOM P.O.,
THIRUVANANTHAPURAM.
6. K.S.PREETHA, AGED 42 YEARS,
RAJ VIHAR,
KARAKAMANDAPOM, NEMOM P.O.,
THIRUVANANTHAPURAM.

*LEGAL HEIRS OF DECEASED 2ND PETITIONER ARE IMPEADED AS ADDL.PETITIONERS
3 TO 6 AS PER ORDER DATED 06.02.2015 IN IA. NO.8494/2014

BY ADV. SRI.BIJU BALAKRISHNAN

RESPONDENT(S)/PLAINTIFFS 2 TO 4:

1. K.KRISHNANKUTTY, PUTHENKOTTA, VILAYIL
VEEDU, KURIATHI, MANACAUD VILLAGE
THIRUVANANTHAPURAM-695012.

2. K.RAMACHANDRAN, PUTHENKOTTA,
VILAYIL VEEDU, KURIATHI, MANACAUD
VILLAGE, THIRUVANANTHAPURAM-695012.
3. K.SHANMUGHAM, PUTHENKOTTA, VILAYIL
VEEDU, KURIATHI, MANACAUD VILLAGE
THIRUVANANTHAPURAM-695012.
4. USHAKUMARI, VILAYIL VEEDU, KURIATHI,
MANACAUD VILLAGE, THIRUVANANTHAPURAM-695012.

R1 TO R3 BY ADV.SRI.R.S.KALKURA
R1 TO R3 BY ADV.SRI.M.S.KALESH
R1 TO R3 BY ADV.SRI.HARISH GOPINATH
R1 TO R3 BY ADV.SRI.V.VINAY MENON
R1 TO R3 BY ADV.SRI.M.AJAY (IRUMPANAM)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 PHOTOSTAT COPY OF THE ORDER DATED 30.05.2008 IN CRP NO.142/2002 OF THIS COURT.

EXT.P2 PHOTOSTAT COPY OF THE SAID IA NO.4345/2009 IN OS NO.692/1981 ON THE FILE OF THE 3RD ADDITIONAL MUNSIF COURT, THIRUVANANTHAPURAM

EXT.P3 PHOTOSTAT COPY OF THE SAID ORDER DATED 24.09.2009 ALLOWED IA NO.4345/2009 IN OS NO.692/1981 OF THE COURT BELOW

EXT.P4 PHOTOSTAT COPY OF THE SAID AFFIDAVIT DATED 27.02.2010 FILED BY THE PETITIONER HEREIN BEFORE THE COURT BELOW

EXT.P5 PHOTOSTAT COPY OF THE MEMO DATED 7.6.2008 OF RECEIVED BY ADVOCATE B.R.SHYAM, THIRUVANANTHAPURAM

EXT.P6 PHOTOSTAT COPY OF THE OBJECTION DATED 15.6.2010 AGAINST IA NO.4345/2009 FILED BY THE PETITIONERS HEREIN BEFORE THE COURT BELOW

EXT.P7 PHOTOSTAT COPY OF THE NOTICE DATED 22.7.2010 ISSUED BY THE PETITIONERS TO ADVOCATE B.R.SHYAM

EXT.P8 PHOTOSTAT COPY OF THE POSTAL RECEIPT

EXT.P1 AS PER IA NO.8494/2014 - PHOTOSTATCOPY OF THE DEATH CERTIFICATE DATED 22.12.2010 OF THE 2ND PETITIONER IN THE WRIT PETITION

EXT.P9 PHOTOSTAT COPY OF THE APPEAL MEMORANDUM IN AS NO.10/1993 ON THE FILES OF THE DISTRICT COURT, THIRUVANANTHAPURAM

EXT.P10 CERTIFIED COPY OF THE MEMO DATED 7.6.2008

RESPONDENTS' EXHIBITS:

EXT.R2(a) TRUE COPY OF THE JUDGMENT DATED 15.3.1991 IN OS NO.692/1981

EXT.R2(b) TRUE COPY OF THE JUDGMENT IN CRP NO.142/2002 DATED 30.5.2008

EXT.R2(c) TRUE COPY OF THE NOTICE DATED 22.7.2010 ISSUED BY THE THIRD DEFENDANT TO ADVOCATE SYAM WITH A COPY TO OUR COUNSEL SRI G.K.NAMBOOTHIRI

EXT.R2(d) TRUE COPY OF THE REPLY DATED 7.8.2010 ISSUED BY OUR COUNSEL TO THE THIRD DEFENDANT

EXT.R2(e) TRUE COPY OF THE CERTIFIED COPY OF THE MEMO DATED 7.6.2008

EXT.R2(f) TRUE COPY OF THE CERTIFIED COPY OF THE OBJECTION IN OS NO.692 OF 1981 DATED 15.6.2010

EXT.R2(g) AFFIDAVIT DATED 12.09.2014 SUBMITTED BY MY COUNSEL SRI G.K.NAMBOOTHIRI SWORN BEFORE A NOTARY PUBLIC

//TRUE COPY//

A.HARIPRASAD, J.

W.P(C) No.25710 of 2010

Dated this the 6th day of February, 2015

JUDGMENT

The writ petition is filed challenging Ext.P3 order, which reads as follows:

*“Plaintiff present and 4th counter
petitioner/defendant represented. IA allowed.”*

Case of the petitioners, in short, is as follows: They are defendants 2 and 3 in O.S.No.692 of 1981 on the file of the III Additional Munsiff Court, Thiruvananthapuram. The suit is one for redemption of mortgage. A preliminary decree was passed. First petitioner took the matter in appeal. Pending the appeal, plaintiffs/respondents filed an application for passing a final decree as I.A.No.1633 of 1992, which was dismissed for default. Subsequently, the appeal filed by the 1st petitioner was also dismissed. Then the respondents applied for restoration of the application for passing a final decree, which was dismissed for default. The order allowing the restoration application was challenged before this Court in C.R.P.No.142 of 2002 and this Court as per Ext.P1 order allowed the petition with following directions:

*“In the result, this civil revision petition is
disposed of. The impugned orders are set aside.*

I.A.No.4683/2000 and I.A.No.4684/2000 are allowed. The final decree application is restored. The delay in filing the restoration application is condoned. Since the defendants were forced to defend the case before the High Court the plaintiffs should compensate them with costs. I order Rs.2,000/- as cost. The plaintiffs shall pay the cost of Rs.2000/- to the 3rd defendant within a period of one month from today failing which the C.R.P. stands dismissed.”

2. Case of the petitioners is that the costs directed to be paid by this Court was not paid in time as stipulated in the order. Not only that the cost was paid to a lawyer, who was not appearing for the party and that too with a malafide intention.

3. The contesting respondents filed a counter affidavit contending that there was no malafides in this matter. According to them, the cost was paid to one Advocate Shri B.R.Shyam, whose father was appearing for the 1st petitioner when the matter was pending in appeal before the lower appellate court. It is also submitted that the said counsel met with an accident and his son was managing the office during his absence. Cost was paid to that lawyer bonafide believing that he represented the 1st petitioner. It is also submitted that the cost was paid in time and a memo was obtained.

4. Heard the learned counsel for the petitioners and the

contesting respondents.

5. Ext.P5 is the memo dated 07.06.2008 whereby it is seen that Advocate Shri B.R.Shyam received cost of ₹2,000/- paid by the counsel appearing for the respondents as directed by this Court in Ext.P1. According to the learned counsel for the petitioners, Advocate Shri B.R.Shyam was never engaged by the petitioners and, therefore, he was not authorised to receive the cost. It is true that the said lawyer was not engaged. Ext.P9 is the memorandum of appeal in A.S.No.10 of 1993 filed before the District Court, Thiruvananthapuram wherein the name of Advocate Shri Bhaskara Pillai was shown as the counsel appearing for the 1st petitioner. Judgment in that case would show that he contested the matter for and on behalf of the 1st petitioner. Orders passed by the learned Munsiff, Thiruvananthapuram on certain interlocutory applications in O.S.No.262 of 1981 would also show that Shri Bhaskara Pillai was appearing for the 1st petitioner till 27.01.2001. Advocate Shri B.R.Shyam is the son of Advocate Shri Bhaskara Pillai. Ext.R2(g) is the affidavit sworn to by Advocate Shri G.K.Namboothiry, who was appearing for the decree holders (respondents in this proceedings). He has sworn to an affidavit stating that bonafide believing that Advocate Bhaskara Pillai continued to appear for the 1st petitioner, cost was paid to his son Shri Shyam as the former was laid up in an accident. So it is evident that the cost was paid in

time, but it was paid to a counsel, who was not holding a vakalath. The malice attributed to by the petitioners is that the memo is a fabricated document and it was done by the parties in collusion with the lawyer. Considering the entire facts and circumstances, I am unable to accept that contention. At the most, it cannot be said that the cost was not properly paid as directed by this Court. It is an indisputable proposition that even in a self working order, the court can extend time for performance of the conditions. Therefore, I am of the view that even if it is seen that the cost was not paid in time, this Court can exercise the power to extend the time for payment of cost. Therefore, the petition is disposed as follows:

Respondents shall pay cost of ₹2,000/- (Rupees two thousand only) ordered by this Court as per Ext.P1 order to the counsel appearing for the petitioners in the lower court within a period of one month and they shall produce a memo to that effect before the court below. In that event, the court below shall proceed with the matter in accordance with the law.

A. HARIPRASAD, JUDGE.

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