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James Chacko Vs. M.O.Mathew

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Court : Kerala

Decided On : Sep-19-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : James Chacko

Respondent : M.O.Mathew

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN FRIDAY, THE19H DAY OF SEPTEMBER201428TH BHADRA, 1936 OP(C).No. 2135 of 2014 (O) ---------- AGAINST THE

ORDER
IN I.A. NOS. 1508 & 1511 OF 2012 IN OS8912009 of I ADDL.SUB COURT,TRIVANDRUM. AGAINST THE

ORDER
IN i.a. 3046/2013 IN CMA1082013 of DISTRICT COURT,TRIVANDRUM DATED0707-2014. PETITIONER(S): ---------- JAMES CHACKO, AGED44YEARS, S/O.SACHARIAH CHACKO, BHARAT TOWERS, NALANCHIRA P.O., THIRUVANANTHAPURAM. BY ADV. SRI.V.C.SARATH RESPONDENT(S): ---------- M.O.MATHEW, AGED85YEARS, S/O.PHILIPOSE MATHEW, MAYATHU HOUSE, NALANCHIRA P.O., THIRUVANANTHAPURAM695013 THIS

OP (CIVIL) HAVING COME UP FOR ADMISSION ON1909-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 2135 of 2014 (O) ---------- APPENDIX PETITIONER(S)' EXHIBITS ---------- EXHIBIT P1 TRUE COPY OF THE

JUDGMENT
IN O.S NO891OF 2009 ON THE FILE OF THE COURT OF THE1T ADDITIONAL SUBORDINATE ,JUDGES COURT,THIRUVAANTHAPURAM DATED1308-2010 EXHIBIT P2 TRUE COPY OF THE COMMON

ORDER
DATED15 12=-2011 BY THE1T ADDITIONAL SUBORDINATE JUDGES COURT,THIRUVANANTHAPURAM EXHIBIT P3 TRUE COPY OF THE COMMON

ORDER
DATED2809- 2012 ON THE FILE OF THE1T ADDITIOAL SUBORDINATE JUDGES COURT,THIRUVANANTHAPURAM EXHIBIT P4 TRUE COPY OF THE

ORDER
IN C.M.A NO108OF 2013 ON THE FILE OF THE DISTRICT COURT,THIRUVANANTHAPURAM DATED0707-2014 EXHIBIT P5 TRUE COPY OF THE

JUDGMENT
IN S.T NO464OF 2007 ON THE FILE OF THE JUDICIAL MAGISTRATE OF FIRST CLASS NO II,THIRUVANANTHAPURAM DATED3107-2014 RESPONDENT(S)' EXHIBITS ---------- NIL. P. BHAVADASAN, J.

- O.P.(C) 2135 of 2014 -
Dated this the 19th day of September, 2014.

JUDGMENT
A very intricate question arises for consideration in this Original Petition.

2. An ex-parte decree was passed against the petitioner in a suit for money filed by the respondent. He moved two applications, one for setting aside the ex-parte decree and the other to condone the delay in filing the petition to set aside the ex-parte decree. It appears that a conditional order was passed by the court concerned allowing the petitions subject to certain payments to be made by the petitioner. On his failure to do so, on a subsequent date, the petitions were taken up and dismissed. Later the petitioner has filed two petitions, i.e., I.A. Nos.1508 and 1511 of 2012 for the very same relief which he prayed for in the earlier applications. Both the courts below found that the subsequent OPC. 2135/2014. 2 petitions are not maintainable in view of the dismissal of the earlier petitions. It is the said order that is assailed in this original petition.

3. This court is unable to find any reason to interfere with the orders of the court below. It is not in dispute that the petitioner did file two applications, namely, I.A. Nos. 1815 and 1861 of 2011 seeking to have the ex-parte decree set aside and also to condone the delay in filing the petition to set aside the ex-parte decree. Ext.P2 is the order passed in those petitions. Those petitions were disposed of by a common order, the operative portion of the said order reads as follows: "In the result, the delay of 217 days is condoned and the ex-parte decree dated 13.8.2010 is hereby set aside on condition that the petitioner will pay Rs.3,000/- towards cost to the plaintiff and on further condition that the petitioner will deposit half of the decree amount before court within one month. In default, both the applications will stand dismissed." OPC. 2135/2014. 3 4. It is not in dispute before this Court that the said conditions are not complied with and that resulted in the dismissal of those applications. It was thereafter the petitioner filed two subsequent applications, namely, I.A. Nos. 1508 and 1511 of 2012 for the very same relief. Obviously in the light of the fact that an earlier order has been passed in respect of the same issue, the court could not have entertained the subsequent applications. The remedy if any available to the petitioner is either to challenge the earlier order dated 1.12.2011 or to seek restoration of those applications. Without doing so, it was quite improper on the part of the petitioner to file two subsequent applications for the very same relief. The court below is therefore perfectly justified in its conclusion that the present applications are not maintainable. OPC. 2135/2014. 4 5. There is no infirmity in the order passed by the court below. However, if the

petitioner seeks to challenge the earlier order dated 1.12.2011, that shall be considered by the court below untramelled by any of the observations made by the court below while dismissing I.A. Nos. 1508 and 1511 of 2012 or by this Court. This Original Petition is disposed of as above. P. BHAVADASAN, JUDGE sb.

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