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**Lansi Thomas Vs. Vahid**

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**SooperKanoon Citation** : sooperkanoon.com/1165019

**Court** : Kerala

**Decided On :** Sep-23-2014

**Judge** : Honourable Mr.Justice P.N.Ravindran

**Appellant** : Lansi Thomas

**Respondent** : Vahid

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN & THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR TUESDAY,THE23D DAY OF SEPTEMBER20141ST ASWINA, 1936 FAO.No. 350 of 2010 ( ) ---------- AGAINST THE

ORDER
/

JUDGMENT
IN IA197109 IN OS432008 of PRINCIPAL SUB COURT, KOCHI DATED3107-2010 APPELLANT/PETITIONER/DEFENDANT: ---------- LANSI THOMAS, S/O.MULLOOR THOMAS, THAMARAPARAMBU DESOM, FORT KOCHI VILLAGE KOCHI TALUK REPRESENTED BY HIS POWER OF ATTORNEY PETER JOSEPH, S/O.PALATHE JOSEPH, METHALA VILLAGE KODUNGALLUR TALUK. BY ADV.

SRI.P.N.SASIDHARAN RESPONDENT/RESPONDENT/PLAINTIFF:

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VAHID,S/O.PALLIPARAMBIL ALAVI, RESIDING AT COCHIN CORPORATION7357 KOCHANGADI DESOM, KOCHI TALUK, REPRESENTED BY HIS POWER OF ATTORNEY, ABDUL RASHEED, S/O.RESIDING AT COCHIN CORPORATION13675, KOCHANGADI DESOM, KOCHI TALUK, PIN-680002 BY ADV. SRI.THOMAS CHAZHUKKARAN THIS FIRST APPEAL FROM

ORDER

S HAVING COME UP FOR ADMISSION ON2309-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: VPV P.N.RAVINDRAN & P.B.SURESH KUMAR, JJ.

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-= F.A.O.No.350 of 2010 =-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-= Dated this the 23rd day of September, 2014

JUDGMENT

**P.B.Suresh Kumar, J.**

The common order passed by the Subordinate Judges Court, Kochi in I.A.Nos.1971 and 1972 of 2009 in O.S.No 43 of 2008 is under challenge in this appeal. The defendant in the suit is the appellant.

2. The suit, O.S.No.43 of 2008, was filed by the respondent for recovery of money. The case of the respondent is that the appellant who had agreed to sell the plaint schedule property to him for a sum of Rs.20 lakhs, refused to transfer the property in violation of the terms of the agreement. The respondent claimed a sum of Rs.8.5 lakhs towards the advance sale consideration paid and a sum of Rs.1 lakh towards damages in the suit, totalling to Rs.9.5 lakhs.

3. On 12.10.2009, the case was included in the special list for trial. As there was no representation for the defendant on F.A.O.No.350 of 2010 2 12.10.2009, the suit was decreed ex parte.

4. According to the defendant, at the relevant time, he was employed at Dubai and as he was not granted leave for that purpose by his employer, he could not appear before court on 12.10.2009. It is also his case that on 12.10.2009, due to heavy traffic block in the city, even his counsel could not reach the court on time. He, therefore, filed I.A.No.1971 of 2009 seeking to set aside the ex parte decree and I.A.No.1972 of 2009 seeking to condone the delay of 36 days in filing I.A.No.1971 of 2009. The court below, as per the impugned order, dismissed both the applications, holding that sufficient cause was not shown by the appellant to condone the delay of 36 days in filing I.A.No 1971 of 2009.

5. At the time of admission, the appellant has pointed out that it is on account of the breach of the terms of the contract committed by the respondent that the agreement did not materialise and he has suffered a loss of Rs.1 lakh on account of the breach committed by the respondent. He has also submitted that he is prepared to pay the balance of Rs.7.5 lakhs to the respondent. In view of the said submission, on 4.11.2010, this court stayed the execution of the ex parte decree, on condition that the appellant F.A.O.No.350 of 2010 3 shall deposit Rs.7.5 lakhs for payment to the respondent.

6. Today, when this appeal came up for hearing, the learned counsel for the appellant submitted that pursuant to the order dated 4.11.2010, the appellant has deposited the sum of Rs.7.5 lakhs, as ordered by this court, before the court below and the respondent had withdrawn the said amount.

7. As pointed out earlier, there was only a delay of 36 days in filing the application to set aside the ex parte decree. Since a substantial portion of the plaint amount has already been deposited by the appellant for payment to the respondent, we feel that it is only appropriate to afford an opportunity to the appellant to contest the suit on merits.

8. Accordingly, the impugned order is set aside, I.A.Nos.1971 and 1972 of 2009 are allowed and the court below is directed to dispose of the suit, O.S.No.43 of 2009 afresh, within three months from the date of receipt of the copy of this judgment.

9. The learned counsel for the appellant submitted that he is prepared to furnish security for the balance plaint amount and prayed for an order to lift the attachment ordered by the court below. If the appellant furnishes security for the balance plaint amount and submits an application for lifting the attachment F.A.O.No.350 of 2010 4 obtained by the respondent, the same shall be disposed within a period of two weeks from the date of receipt of a copy of this judgment. Sd/- P.N.RAVINDRAN JUDGE Sd/- P.B.SURESH KUMAR JUDGE vpv

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