

John vs Sajimon

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Court : Kerala

Decided On : Feb-08-2024

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : OP(C)/1913/2023

Appellant : JOHN

Respondent : Sajimon

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA,
1945 OP(C) NO. 1913 OF 2023 AGAINST THE COMMON ORDER
DATED 30.06.2023 IN I.A.No.1/2022 & I.A.No.2 OF 2022 IN
R.P.No.29/2022 IN O.S No.485/2016 OF MUNSIF COURT, PUNALUR
PETITIONER/PETITIONER/REVIEW PETITIONER/PLAINTIFF: JOHN,
AGED 56 YEARS, S/O.CHERIYAN, CHARUVILA PUTHEN VEEDU,
THALAVOOR VILLAGE, NOW RESIDING AT JOLY BHAVAN,
ELAMPAL, ELAMPAL P.O, KOLLAM DISTRICT, PIN - 691322. BY
ADVS. P.U.SHAILAJAN MIDHUN SUDARSANAN P. NIDHEESH T.P
RESPONDENTS/RESPONDENTS/RESPONDENTS/DEFENDANTS: 1

SAJIMON, AGED 51 YEARS, S/O.CHERIYAN, CHARUVILA VEEDU, THALAVOOR, THALAVOOR P.O, KOLLAM DISTRICT, PIN - 691508. 2 STEEPHEN, AGED 53 YEARS, S/O.GEEVARGHESE, ST.GEORGE HOUSE, VELINALLOOR, KOTTARAKKARA, KOLLAM DISTRICT, PIN - 691510. 3 SUNDARAN PILLAI, AGED 66 YEARS, S/O.VASUPILLAI, SUMESH BHAVAN, VADACODU, THALAVOOR, THALAVOOR P.O, KOLLAM DISTRICT, PIN - 691508. 4 SATHEESAN PILLAI, AGED 53 YEARS, S/O.SUKUMARA PILLAI, KOCHUKUTTARAYIL, KURA, THALAVOOR, PATHANAPURAM, KOLLAM DISTRICT, PIN - 691508. BY ADVS. T.R.HARIKUMAR ARJUN RAGHAVAN(K/1277/2012) - 2 - THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 15.01.2024, THE COURT ON 08.02.2024, DELIVERED THE FOLLOWING: - 3 -

JUDGMENT

Dated, this the 8th February, 2024 Under challenge in this Original Petition is Ext.P7 order, which dismissed an application for review, as also, for condonation of delay. The

order sought to be reviewed is one, rejecting the

plaint under Order VII, Rule 11 for non-payment of court fee, which is a deemed decree, appealable under Order XLI, Rule 1.

2. When this matter was taken up for

consideration, the question as to maintainability of this Original Petition under Article 227 was raked in up and the parties were heard. Learned counsel for the respondents relied upon a recent

judgment of the Honourable Supreme Court in

Rahimal Bathu and Others v. Ashiyal Beevi [AIR 2023 SC 5674], to submit that the dismissal of a review petition will not enable the party to prefer a writ petition under Article 227 or for - 4 - that matter, a revision under the Code; instead, the original

order, which is a deemed decree, has to be challenged in an appeal.

3. In answer to the same, learned counsel for

the petitioner would submit that the review petition was filed along with a petition to condone the delay and that as per settled law, the petition to condone the delay ought to have been considered first. Learned counsel would submit that if the delay petition was considered first and dismissed, the question of payment of court fee would not surface for consideration, in which case, an Original Petition under Article 227 would be maintainable against the dismissal of the petition to condone the delay.

4. Per contra, if the delay is condoned, the

review petition becomes live and the petitioner will have to pay the court fee, if the review sought for is allowed. This distinction will make - 5 - a difference to the legal position settled in Rahimal Bathu (supra), is the submission made by the learned counsel for the petitioner.

5. Having heard the learned counsel appearing on

both sides, this Court finds that the submission made by the learned counsel for the petitioner cannot be accepted. The question, which was considered in Rahimal Bathu (supra) is with respect to the maintainability of a revision, when a decree is sought to be revised by filing a review. The legal position has been discussed thus in paragraph nos.24 and 25 of the judgment, which are extracted here below:

24. What is clear from the above observations is, that where the review is allowed and the decree/order under review

is reversed or modified, such an order

shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree - 6 -

so vacated, reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law. But where the review petition is dismissed, there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge within the time stipulated by law, the

original decree and not the order

dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.

25. Apart from above, there is another reason also for a revisional court not to

entertain a revision against an order

rejecting on merits an application for review of an appealable decree, which is, if the revisional court sets aside or modifies or alters a trial courts decree, the decree of the trial court would merge in the one passed by the revisional court. In consequence, the right of the party aggrieved by the trial courts decree to file an appeal would - 7 -

get affected. Further, there may be a case where a person is aggrieved by a finding of the trial court on any issue, even though the trial courts decree may be in its favour. In that scenario, if there is an appeal by a party aggrieved by the decree, that person would have a right to take an objection against the adverse finding with the aid of the provisions of Order XLI, Rule 22 of the CPC, but in the event of there being no appeal against the decree, such a person would lose its right to take an

objection, under Order XLI, Rule 22 of the CPC, against that adverse finding."

(underlined by me for emphasis)

6. It is clear from the above extracted portion

- particularly from the observations which are underlined above for emphasis - that there is no question of any merger, when the review petition is dismissed and a person aggrieved by the decree or the order shall have to challenge the original decree; and not the order dismissing the review

petition. In the instant case, the order

rejecting the plaint is a deemed decree as per - 8 - Section 2(2) of the Code, which is appealable under Order XLI, Rule 1.

7. In the circumstances, this Court holds that

the instant Original Petition is not maintainable and that the same would stand dismissed on that ground. Sd/- C.JAYACHANDRAN, JUDGE ww - 9 - APPENDIX OF OP(C) 1913/2023 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PLAINT IN O.S.NO.485 OF 2016 DATED 30.3.2021 FILED BY THE PETITIONER BEFORE THE MUNSIFF'S COURT, PUNALUR. EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 31.8.2021 IN O.S.NO.485 OF 2016 OF THE MUNSIFF'S COURT, PUNALUR. EXHIBIT P3 TRUE COPY OF THE R.P.NO.29 OF 2022 DATED 8.4.2022 FILED BY THE PETITIONER BEFORE THE MUNSIFF'S COURT, PUNALUR. EXHIBIT P4 TRUE COPY OF THE I.A.NO.1 OF 2022 FILED

BY THE PETITIONER BEFORE THE MUNSIFF'S COURT, PUNALUR TO CONDONE THE DELAY FOR FILING THE REVIEW PETITION. EXHIBIT P5 TRUE COPY OF THE COUNTER STATEMENT FILED BY THE 4TH RESPONDENT IN R.P.NO.29 OF 2022 IN O.S.NO.485 OF 2016 DATED NIL BEFORE THE MUNSIFF'S COURT, PUNALUR. EXHIBIT P6 TRUE COPY OF THE COUNTER STATEMENT FILED BY THE 4TH RESPONDENT IN I.A.NO.1

OF 2022 IN R.P.NO.29 OF 2022 IN O.S.NO.485 OF 2016 OF THE MUNSIFF'S COURT, PUNALUR DATED NIL. EXHIBIT P7 TRUE COPY OF THE COMMON ORDER DATED 30.6.2023 IN I.A.NO.1 OF 2022 & I.A.NO.2 OF 2022 IN R.P.NO.29 OF 2022 IN O.S. NO.485 OF 2016 OF THE MUNSIFF'S COURT, PUNALUR.

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