SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sunil Kumar vs Sarojam

Sunil Kumar vs Sarojam

SooperKanoon Citation : sooperkanoon.com/1349581

Court : Kerala

Decided On : May-30-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : FAO/210/2012

Appellant : Sunil Kumar

Respondent : Sarojam

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 30TH DAY OF MAY 2023 / 9TH JYAISHTA, 1945 F.A.O.NO.210 OF 2012 AGAINST THE ORDER DATED 04.02.2012 IN E.A.NO.233 OF 2011 IN E.P.NO.94 OF 2009 IN O.S.NO.145 OF 2008 OF THE SUB COURT, NEYYATTINKARA APPELLANT/PETITIONER/DEFENDANT: SUNIL KUMAR S/O.CHELLAPPAN, ELSY COTTAGE, MOOVERIKKARA, NARANI, KUNNATHUKAL P.O. BY ADV. SRI.R.GOPAN RESPONDENT/COUNTER PETITIONER/PLAINTIFF: SAROJAM W/O.KRISHNANKUTTY, KRISHNA GIRI, NARANI,

KUNNATHUKAL P.O., PIN-695 001. BY ADV. SRI.JIBU P THOMAS THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 30.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The appellant who is the defendant in O.S.No.145 of 2008 on the file of the Sub Court, Neyyattinkara, which was one filed by the respondent herein-plaintiff for recovery of an amount of Rs.2,51,000/- together with future interest and cost, on the strength of a dishonoured cheque for Rs.2,00,000/-, has filed this appeal, invoking the provisions under Order XLIII Rule 1(j) of the Code of Civil Procedure, 1908, seeking an order to set aside the

order dated 04.02.2012 of the Sub Court, Neyyattinkara in

E.A.No.233 of 2011 in E.P.No.94 of 2009 in O.S.No.145 of 2008. The appellant, who is the judgment debtor in E.P.No.94 of 2009 in O.S.No.145 of 2008, filed E.A.No.233 of 2011 under Order XXI Rule 90 of the Code of Civil Procedure, 1908, to set aside the sale conducted on 30.03.2011. The Sub Court, Neyyattinkara dismissed

that interlocutory application for the reasons stated in the order

dated 04.02.2012.

2. Heard the learned counsel for the appellant-judgment debtor-defendant and the learned counsel for the respondent- decree holder-plaintiff.

3. The issue that arises for consideration in this appeal is

as to whether any interference is warranted in the order dated 04.02.2012 of the Sub Court, Neyyattinkara in E.A.No.233 of 2011 in E.P.No.94 of 2009 in O.S.No.145 of 2008.

4. In E.P.No.94 of 2009 in O.S.No.145 of 2008 the property was sold in auction on 30.03.2011 and the matter was posted to 03.06.2011 for confirmation of sale. The appellant-

judgment debtor filed E.A.No.233 of 2011 on 02.06.2011, under

Order XXI Rule 90 of the Code of Civil Procedure, to set aside the

sale conducted on 30.03.2011, on the ground of irregularity. Though that application was dated 27.05.2011, it was filed before the Sub Court, Neyyattinkara only on 02.06.2011.

5. In view of the provisions under Article 127 of the

Limitation Act, 1963 an application to set aside sale in execution of a decree has to be filed within 60 days from the date of the sale. Section 5 of the Limitation Act provides of extension of prescribed period in certain cases. As per Section 5, any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant

satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. As per the Explanation, the fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of Section 5.

6. In Aarifaben Yunusbhai Patel v. Mukul

Thakorebhai Amin [(2020) 5 SCC 449] the Apex Court held

that in view of the bar under Section 5 of the Limitation Act, 1963 the extension of the period under the said Section has no application in execution proceedings under Order XXI of the Code of Civil Procedure, 1908. In terms of Section 14 of the Limitation Act, the time spent by the applicant for prosecuting with due diligence other civil proceedings may be excluded if such proceedings are

prosecuted in good faith in a court which, from defect of jurisdiction or other cause, is unable to entertain it.

7. In the case on hand, the appellant-judgment debtor

filed E.A.No.233 of 2011 on 02.06.2011, under Order XXI Rule 90 of the Code of Civil Procedure, to set aside the sale conducted on 30.03.2011. The said application was filed beyond the period of 60 days prescribed in Article 127 of the Limitation Act. In view of the bar under Section 5 of the Limitation Act, the Sub Court, Neyyattinkara rightly rejected the said application, by the impugned order dated 04.02.2012. In such circumstances, we find no merits in the appeal. The appeal fails and the same is accordingly dismissed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE PV

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com