

Rasheed vs Nazar

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SooperKanoon Citation : sooperkanoon.com/1351934

Court : Kerala Orders

Decided On : Jun-26-2023

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

Appeal No. : FAO/148/2014

Appellant : Rasheed

Respondent : NAZAR

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 26TH DAY OF JUNE 2023 / 5TH ASHADHA, 1945 FAO NO.148 OF 2014 AGAINST THE COMMON ORDER DATED 20.11.2013 OF THE SUB-JUDGE, KOCHI IN I.A.NO.749 OF 2013 & 759 OF 2013 IN O.S.NO.137 OF APPELLANT/PETITIONER/PLAINTIFF: RASHEED AGED 43 YEARS S/O.BEERASA, RESIDING AT HOUSE NO CC 13/173, PANAYAPPILLY, KOCHI-2 BY ADVS. SRI.V.K.UNNIKRISHNAN SRI.A.K.RADHAKRISHNAN

RESPONDENT/RESPONDENT/DEFENDANT: NAZAR AGED 49

YEARS S/O.V.J. HASSANKUNJU, RESIDING AT VATTAPARAMBIL HOUSE, THOPPUMPADY VILLAGE, 682005 THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 26.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K.Narendran, J.

The appellant is the plaintiff in O.S.No.137 of 2009 on the file

of the Sub Court, Kochi, which was one filed against the respondent herein-defendant, for specific performance of an agreement for sale dated 24.01.2006 invoking the provisions under Order XLIII Rule 1(c) of the Code of Civil Procedure, 1908. The appeal is filed challenging the order dated 20.11.2013 of the Sub Court dismissing I.A.No.749 of 2013 in O.S.No.137 of 2009, an application filed under Order IX Rule 9 of the Code seeking to restore I.A.No.863 of 2012, which was one filed for restoration of the suit, and I.A.No.759 of 2013 in O.S.No.137 of 2009 filed under Section 5 of the Limitation Act, seeking to condone the delay of 45 days in filing I.A.No.749 of 2013 in O.S.No.137 of 2009. Service of notice was not complete on the defendant. On 17.07.2010, the suit was dismissed for default.

2. Those applications ended in dismissal by the order

dated 20.11.2013, which is under challenge in this appeal.

3. On 21.05.2014, notice on admission was ordered to the respondent. The notice issued to the respondent returned with an endorsement not known.

4. Today, when this matter is taken up for consideration,

the learned counsel for the appellant would submit that the appellant does not want to prosecute this appeal further, and therefore the same may be dismissed as withdrawn. Recording the aforesaid submission made by the learned counsel for the appellant, this appeal is dismissed as withdrawn. ANIL K. NARENDRAN, JUDGE P.G. AJITHKUMAR, JUDGE PV

