

Ramakrishnan vs Sajayakumar,

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Court : Kerala

Decided On : Jul-18-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : CRP/37/2020

Appellant : Ramakrishnan

Respondent : Sajayakumar,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 18TH DAY OF JULY 2022 / 27TH ASHADHA, 1944 CRP NO. 37 OF 2020 AGAINST THE ORDER DATED 3.8.2019 IN AS 7/2018 PASSED BY THE PRINCIPAL SUB COURT, IRINJALAKUDA REVISION PETITIONER/APPELLANT/CLAIM PETITIONER: RAMAKRISHNAN, AGED 70 YEARS, S/O.PANNIKATT VELAPPAN, KAIPAMANGALAM DESOM AND VILLAGE, KODUNGALLUR TALUK, THRISSUR DISTRICT, PIN-680681. BY ADVS. K.S.RAJESH SRI.M.SHAJU PURUSHOTHAMAN RESPONDENTS/PLAINTIFF & DEFENDANT:

1 SAJAYAKUMAR, KURIYAKATTIL SARADHAMMA, EDAKKULAM DESOM, POOMANGALAM VILLAGE, MUKUNDHAPURAM TALUK,

THRISSUR DISTRICT, PIN-680001. 2 GIREESH, AGED 45 YEARS, S/O.KOTTAKKAL KRISHNAN, PERUMBADAPPU DESOM, CHENTHRAPINNY VILLAGE, KODUNGALLUR TALUK, NOW RESIDING AT K.K.MATERIAL ORGANISATION, NAVAL BASE, KOCHI-4. BY ADV SRI.V.M.KRISHNAKUMAR THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 18th day of July, 2022 The revision petition is filed assailing the

order dated 03.08.2019 passed in I.A.No.190/2018 and

the judgment in A.S.No.7/2018 of the Court of the Principal Subordinate Judge, Irinjalakkuda.

2. The revision petitioners' case, relevant for the determination of the revision petition, is that he had filed a claim petition as E.A.333/2015 in E.P.777/2015

before the Court of the Munsiff, Kodungallur. The learned Munsiff dismissed the execution application. Challenging the said order, the revision petitioner has preferred A.S.No.7/2018 with I.A.190/2018, to condone the delay of 114 days in filing the appeal. However, the Appellate Court, without considering the application in its proper perspective, has in a very casual manner and by a cryptic order dismissed the application to condone the delay. Consequentially, the

appeal has also been dismissed. The impugned order

and judgment are erroneous and wrong. Hence, the revision petition.

3. Heard; Sri.K.S.Rajesh, the learned counsel appearing for the petitioner and Sri.V.M.Krishnakumar, the learned counsel appearing for the respondents.

4. The point is whether there is any illegality or

irregularity in the impugned order and judgment

passed by the court below.

5. In Robin Thapa v. Rohit Dora 2019 KHC

6641, the Honourable Supreme Court has held that, ordinarily a litigation is based on adjudication of the dispute on its merit and the litigation may not be terminated by default of either the plaintiff or the defendant. The cause of justice does require that, as far as possible, adjudication be done on merits.

6. In the case at hand, the revision petitioner had filed the appeal with an application to condone the delay of 114 days.

7. It was the specific case of the revision petitioner that he was out of station, therefore, he was precluded from filing the appeal within the prescribed time period. The 1st respondent had objected to the application, but the 2nd respondent did not file any objection.

8. The court below, by the impugned one line order, has held that the reason stated in the affidavit in support of the application is not convincing and satisfactory. Accordingly, the court below has dismissed I.A.No.190/2018.

9. Going by the law laid down in the afore-cited

decision and also taking note of the fact that the court below has not adverted to any of the contentions raised by the revision petitioner in the affidavit filed in support of the application, I find that the impugned

order in I.A.No.190/2018 is irregular and improper. In

the above said background, and taking into account the reasons stated in the affidavit in support of the applications and also the fact that the appeal is of the year 2018, I am of the firm view that the revision petition is to be allowed. In the result, the revision petition is allowed in the following manner:-

(i) The order dated 03.08.2018 in I.A.No.190/2018 in A.S.No.7/2018 is set aside.

(ii) I.A.No.190/2018 is allowed, by condoning the

delay of 114 days in filing the appeal, on condition that the petitioner pays, the learned counsel appearing for the 1st respondent before this Court, an amount of Rs.5,000/- within a period of two weeks and files a memo to the said effect with a copy of this judgment, before the court below.

(iii) On such memo being filed and judgment

being produced, the court below shall consider and dispose of A.S.No.7/2018, in accordance with law, as expeditiously as possible at any rate on or before 31.03.2023. Sd/- C.S.DIAS Judge NR/18/07/2022

APPENDIX PETITIONER ANNEXURES ANNEXURE A A TRUE COPY OF THE ORDER DATED 19.8.2017 IN EA.333/2015 PASSED BY THE MUNSIF COURT, KODUNGALLUR. ANNEXURE B A TRUE COPY OF THE APPEAL AS.7/2018 DATED 20.1.2018 FILED BY THE REVISION PETITIONER. ANNEXURE C A TRUE COPY OF THE DELAY CONDONATION PETITION IA.190/2018 DATED 20.1.2018 FILED BY THE REVISION PETITIONER. ANNEXURE D A TRUE COPY OF THE ORDER DATED 3.8.2019 IN IA.190/2018 OF THE SUB COURT, IRINJALAKUDA. ANNEXURE E THE CERTIFIED COPY OF THE JUDGMENT DATED 3.8.2019 OF THE SUB COURT, IRINJALAKUDA IN AS.7/2018.

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