

Shaji vs Saseendran

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Court : Kerala

Decided On : Jan-25-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/158/2022

Appellant : SHAJI

Respondent : Saseendran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 25TH DAY OF JANUARY 2022 / 5TH MAGHA, 1943
OP(C) NO. 158 OF 2022 AGAINST ORDER IN IA.NO.613/2020 IN
O.S.NO.560/2015 OF THE MUNSIF COURT, MAVELIKKARA DATED
25.11.2021 PETITIONER/PETITIONER/DECREE HOLDER: SHAJI,
AGED 46 YEARS SON OF BHADRAKSHAN, R/A: BHAGAVATHI
AYYATHU VADAKKATHIL, MUTHUKATTUTHARA MURI,PALAMEL
VILLAGE, NOORANAD, ALAPPUZHA-690 504, REPRESENTED BY
THE POWER OF ATTORNEY HOLDER GEETHA DEVARAJAN, AGED
54 YEARS, WIFE OF DEVARAJAN, R/A: ADINJARAYIL
HOUSE,PUTHUPPALLY P.O.,PUTHUPPALLY

VILLAGE,KAYAMKULAM, PIN - 690527. BY ADVS. T.S.HARIKUMAR
P.B.SAHASRANAMAN RESPONDENT/RESPONDENT/JUDGMENT
DEBTOR: SASEENDRAN AGED 44 YEARS SON OF
BHADRAKSHAN,BHAGAVATHY AYYATHU
VADAKKATHIL,MUTHUKATTUTHARA MURI,PALAMEL VILLAGE,
NOORANAD, ALAPPUZHA - 690504. THIS OP (CIVIL) HAVING COME
UP FOR ADMISSION ON 25.01.2022, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING: O.P.C.No.158/2022 2

A. BADHARUDEEN, J.

===== O.P(C).No.158 of 2022
===== Dated this the 25th day of
January, 2022

JUDGMENT

The petitioner, who is the decree holder in O.S.No.560

of 2015 on the file of Munsiff Court, Mavelikkara, has filed this petitioner under Article 227 of the Constitution of India. The petitioner is aggrieved in the matter of dismissal of I.A.No.613/2020, where the petitioner sought the relief to extend the period to deposit the balance consideration amounting Rs.39,000/-, as per decree dated 24.08.2017.

2. Heard the learned counsel for the petitioner.

3. The learned counsel for the petitioner submitted

that the power of the court to extend the time is not taken away and the court has discretion to extend the time even after filing of a petition under Section 28(1) of the Specific Reliefs Act by the judgment debtor after having the same rejected. In this connection, he has placed decision reported O.P.C.No.158/2022 3 in [(1997) 9 SCC 217], Sardar Mohar Singh v. Mangilal.

2. He also submitted that the petitioner believed his

brother, the judgment debtor, in the matter of getting the sale executed and therefore he failed to deposit the amount before the court. At this juncture, the learned counsel pressed for extending the time as sought for in I.A.No.613 of 2020.

3. I have perused the order. The learned Munsiff

refused to exercise the discretion in favour of the petitioner/decreed holder after highlighting the decision reported in [1983 KHC 375], Smt.Periyakkal & Ors. v. Smt.Dakshayani holding the principle that time would not be extended ordinarily not for mere asking. It would be granted in rare cases to prevent manifest injustice. The learned Munsiff also observed that the petitioner had enough opportunity to deposit the amount before the court, either within 3 months or within a reasonable period thereafter.

4. I have perused the judgment in O.S.No.560 of

2015. The decreetal terms are as follows:

(1) The defendant is hereby directed to execute a sale deed in O.P.C.No.158/2022
4

favour of the plaintiff with respect to the plaint schedule property and the building thereon, after receiving balance sale consideration of Rs.39,000/- from the plaintiff, within 3 months from the date of the decree. Failing which the plaintiff is at liberty to execute the deed through the court.

(2) Considering the facts and circumstances of the case and the relation of the parties, there will be no order as to costs.

5. Going by the terms of the decree, it is specifically

clear that the petitioner could execute the decree by paying the balance sale consideration of Rs.39,000/- within 3 months. On failure, the plaintiff was given liberty to execute the sale deed through court. According to the learned counsel for the petitioner, though the petitioner approached the

judgment debtor to execute the sale deed within the period of

3 months, since he was abroad, the sale deed could not be executed. But the learned counsel failed to justify what prompted the decree holder/petitioner in this matter to deposit the amount in that court in terms of the decree and to press for execution of the sale deed through process of court. Instead of depositing the amount within 3 months and O.P.C.No.158/2022 5

without filing a petition within a reasonable time, after a long lapse of time, on 18.06.2020, I.A.No.613/2020 was filed before trial court seeking extension of time to deposit the balance sale consideration. It is in this view of the matter, the learned Munsiff not inclined to exercise the discretion in favour of the petitioner.

6. I do agree with the learned Munsiff for the reason that the petition filed by the petitioner has highly belated and the petitioner not made any bona fide attempt to get the

balance sale consideration deposited before the judgment

debtor, within that period. Thus a party shown lethargy to deposit the balance sale consideration does not deserve the discretion of the Court in the matter of extension of time to deposit the amount. Hence this petition fails and is accordingly dismissed. Sd/- (A. BADHARUDEEN, JUDGE) rtr/ O.P.C.No.158/2022 6
APPENDIX OF OP(C) 158/2022 PETITIONER'S EXHIBITS Exhibit P.1 THE TRUE PHOTOSTAT COPY OF THE

JUDGMENT DECREE IN O.S.NO.560 OF 2015

OF THE MUNSIFF COURT, MAVELIKARA, DATED 24-08-2017. Exhibit P.2 THE TRUE PHOTOSTAT COPY OF THE I.A.NO.613 OF 2020 IN O.S.NO.560 OF 2015 OF THE MUNSIFF COURT, MAVELIKARA DATED 18-06-2020.

Exhibit P.3 THE TRUE PHOTOSTAT COPY OF THE ORDER

I.A.NO.613 OF 2020 IN O.S.NO.560 OF 2015 OF THE MUNSIFF COURT, MAVELIKARA, DATED 25-11-2021.

