

Pary vs Lazar

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Court : Kerala

Decided On : Nov-10-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : OP(C)/930/2021

Appellant : PARY

Respondent : LAZAR

Judgement :

OP(C) NO. 930 OF 2021 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY,
THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944 OP(C)
NO. 930 OF 2021 IA 2502/2017 IN OP PAU 324/2017 OF ADDITIONAL
DISTRICT COURT, THRISSUR PETITIONER/PETITIONER: PARY
AGED 79 YEARS D/O.MORKKATHAZHATH VEETIL THEYAN,
VADAKKUMURI DESOM, PARAKKAD VILLAGE THRISSUR TALUK.
SAIJO HASSAN SRI.BENOJ C AUGUSTIN SRI.RAFEEK. V.K.
SRI.U.M.HASSAN SMT.P.PARVATHY SHRI.MANAS P HAMEED
SMT.AATHIRA SUNNY SHRI.ELDHO.N.MONCY
RESPONDENT/RESPONDENT: LAZAR AGED 72 YEARS S/O.

CHITTILAPILLY ANTONY, ADAT VILLAGE, THRISSUR TALUK - 680551. SANTHOSH P.PODUVAL R.RAJITHA THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 10.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C) NO. 930 OF 2021 2

JUDGMENT

The original petition is filed challenging Ex.P2 order

passed by the Court of the First Additional District Judge, Thrissur, in I.A. No.2502 of 2017 in O.P. (Pauper) No.324 of 2017.

2. On an evaluation of Ext.P2 order, it is seen that the order was passed dismissing an application filed under Section 5 of the Limitation Act to condone the delay.

3. The legal position in the above context is no

longer res integra in view of the law laid down by this Court in Kunhiraman v. Rossy [1979 KLT 718] and Thambi v. Mathew and another [(1987) 2 KLT 848 (FB)] that when an application to condone the delay is dismissed and consequentially the appeal/original petition is dismissed, the remedy is to challenge the decree in the appeal/original petition in an appeal and challenge the

order dismissing the delay petition as a ground in the

proposed appeal, and not to challenge the order alone.

4. In the above legal background, the remedy of the OP(C) NO. 930 OF 2021 3 petitioner is to challenge the judgment passed in O.P.

(Pauper) No.324 of 2017 and not to challenge the order

passed in the application filed under Section 5 of the Limitation Act. In the result, without prejudice to the right of the petitioner to work out his remedies, in

accordance with law, the original petition is dismissed. Sd/- C.S.DIAS, JUDGE
okb/10.11.22 //True copy// P.S. to Judge OP(C) NO. 930 OF 2021 4 APPENDIX
OF OP(C) 930/2021 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE
JUDGMENT AND DECREE DATED 5.12.2016 IN O.S NO. 5053 OF 2013 IN THE
COURT OF THE II ADDITIONAL MUNSIFF, THRISSUR. EXHIBIT P2 TRUE
COPY OF THE ORDER DATED 25.06.2018 IN IA 2502 OF 2017 IN OP
(PAUPER) NO. 324/2017. EXHIBIT P3 TRUE COPY OF THE ORDER DATED
25.06.2018 IN OP(PAUPER) NO. 324/2017.

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