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Bharatan, vs Binu,

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SooperKanoon Citation : sooperkanoon.com/1735002

Court : Kerala

Decided On : Jun-29-2020

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : OP(C)/229/2020

Appellant : Bharatan,

Respondent : BINU,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN MONDAY, THE 29TH DAY OF JUNE 2020 / 8TH ASHADHA, 1942 OP(C).No.229 OF 2020 AGAINST THE ORDER IN CMA 4/2020 DATED 08-01-2020 OF II ADDITIONAL DISTRICT COURT,TRIVANDRUM PETITIONER/APPELLANT: BHARATAN, AGED 60 YEARS S/O CHELLAPPAN NADAR, RESIDING AT CKB HOUSE, VILAVOORKKAL VILLAGE AND DESOM, MARUTHUMOODU, KATTAKADA TALUK. BY ADV. SRI.T.N.MANOJ RESPONDENT/DEFENDANT:

BINU, AGED 45 YEARS S/O NESAN, RESIDING AT APSARA BHAVAN, VILAVOORKKAL VILLAGE AND DESOM, PERUKAVU POST, KATTAKADA TALUK, 695 573. R1 BY ADV. SMT.K.KUSUMAM R1 BY ADV. SRI.BASANT BALAJI R1 BY ADV. SMT. REEJA R. NAIR R1 BY ADV. SHRI.BENRAJ K.R. THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29.06.2020, ALONG WITH OP(C).462/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN MONDAY, THE 29TH DAY OF JUNE 2020 / 8TH ASHADHA, 1942 OP(C).No.462 OF 2020 AGAINST THE ORDER IN CMA 4/2020 DATED 08-01-2020 OF II ADDITIONAL DISTRICT COURT,TRIVANDRUM AGAINST THE ORDER IN I.A.NO.7976 OF 2018 IN OS 391/2018 OF I ADDITIONAL MUNSIFF COURT, TRIVANDRUM PETITIONER/PETITIONER/APPELLANT: BHARATAN, AGED 60 YEARS S/O CHELLAPPAN NADAR, RESIDING AT CKB HOUSE, VILAVOORKKAL VILLAGE AND DESOM, MARUTHUMOODU, KATTAKADA TALUK. BY ADV. SRI.T.N.MANOJ RESPONDENT/S: BINU, AGED 45 YEARS S/O NESAN, RESIDING AT APSARA BHAVAN, VILAVOORKKAL VILLAGE AND DESOM, PERUKAVU POST, KATTAKADA TALUK, 695 573. R1 BY ADV. SMT.K.KUSUMAM R1 BY ADV. SRI.BASANT BALAJI R1 BY ADV. SMT. REEJA R. NAIR R1 BY ADV. SHRI.BENRAJ K.R. THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29.06.2020, ALONG WITH OP(C).229/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Among the afore two original petitions, O.P(C)No.462 of 2020 has been filed against Ext.P9 order therein, issued by the Court of the Additional District Judge, Thiruvananthapuram, dismissing an application for condonation of delay of 460 days in filing C.M.Appeal No.4 of 2020. The

order challenged in the other original petition, namely O.P(C)No.229 of 2020, is the consequential one in the C.M.Appeal, dismissing it on the ground that the delay in preferring the same has not been condoned.

2. Compendiously, the issue between the

parties in these cases, who are common, relate to a construction of a compound wall by the respondent. It appears that the respondent has obtained an order of injunction against the petitioner herein from causing any obstruction to him in constructing a compound wall in his property. It transpires that this order, which

was issued in I.A.No.6355 of 2018, was taken up before the Trial Court itself by the petitioner herein, by filing a review petition, numbered as I.A.No.7976 of 2018; and that when it was dismissed, the petitioner approached this Court by filing O.P(C)No.3379 of 2019 on the allegation that the carbon copy of the same had not been issued by the Trial Court. This original petition was disposed of by this Court through a judgment dated 09/01/2020 in the following manner.

The original petition is filed seeking issuance of a carbon copy of the order in I.A.No.7976 of 2018. It is not in dispute that the same has been already been issued. Original petition has become infructuous. Original petition accordingly dismissed as infructuous.

3. The records show that the petitioner

thereafter filed C.M.Appeal No.4 of 2020 challenging the earlier order of the Trial Court in I.A.No.6355 of 2018; and along with, he filed I.A.No.2 of 2020 to condone the delay of 460 days in preferring the said appeal. It is this I.A. that has been now dismissed by the Trial Court, leading to the consequent dismissal of the C.M.Appeal, the order in which have been impugned by the petitioner in these original petitions.

4. I have heard Shri.T.N.Manoj, learned counsel appearing for the petitioner and Smt.A.Kusumam, learned counsel appearing for the respondent, in both cases.

5. Smt.Kusumam, learned counsel for the

> respondent, began her submissions in opposition to the contentions of the petitioner in these original petitions, by saying that he has been deliberately protracting the proceedings before the Trial Court by filing case after case and by approaching wrong forums at every stage. She submitted that her client has already obtained an injunction against the petitioner and it is only to ensure that he does not obtain the fruits of the said order that the petitioner

has been filing multiple cases, thus frustrating the processes of the law.

6. Smt.Kusumam submits that instead of the

> petitioner approaching the District Court, Thiruvananthapuram, through a proper appeal at the relevant time, he choose to approach this Court by filing O.P(C)No.3379 of 2019, in which the order in I.A.6355 of 2018 issued by the Trial Court was also impugned. She, however, concedes that in the judgment of this Court, the challenge against the order of the Trial Court was not even adverted to but that it was closed in the afore manner recording that the certified copy in I.A.No.7976 of 2018 - which was an I.A. seeking review of the order in I.A.No.6355 of 2018 - had been issued.

7. When I consider the afore submissions and test them against the orders that are impugned, it becomes evident that the learned District Judge has disposed of I.A.No.2 of 2020

> in CMA.No.4 of 2020, through Ext.P9 in O.P(C)No.462 of 2020, in an extremely pithy manner. I say this because the order, in fact, starts by saying that the CM Appeal itself may not be maintainable, but then

> disposed of the petition to condone delay merely saying the reasons sworn in the affidavit in support of this petition are not satisfaction or sufficient to condone the delay. Hence this petition dismissed.

8. It is thus obvious, that the District

> Court gathered an impression that the C.M Appeal itself is not maintainable and then choose to dismiss I.A.No.2 of 2020 in the above manner, but without discussing the reasons that persuaded the said Court to feel that the delay cannot be condoned. It requires no reinstatement that a Court while acting judicially cannot issue an order condoning delay or dismissing an application for condonation of delay merely saying that
>
> sufficient reasons had not been shown, since it will be impossible for the parties or even for this Court to gather the reasons why the Court felt so. This order certainly is a non speaking one and I am unable to understand the mind of the Court as to why it concluded that the reasons were not justified to condone the delay.

9. I am, therefore, of the view that the

impugned order in O.P(C)No.462 of 2020, namely Ext.P9, cannot obtain my imprimatur and that the interim application filed by the petitioner herein, which led to the said order, will certainly have to be reconsidered.

10. I hasten to add that when I say so it

may not be understood by anyone, including the Court below, that I have spoken about the merits of the application for condonation of delay preferred by the petitioner; and I make it clear that it will be up to the said Court to take a decision thereon as per law and based on the averments and pleadings on record.

11. Once I conclude so, it goes without

saying that the consequential order passed by the District Court, namely Ext.P9 in O.P(C)229 of 2020 dismissing the C.M.Appeal, also will have to fail. I, therefore, deem it appropriate to set aside the same also, not because I have gone into the merits of the appeal, but so as to have the consideration of the appeal at the hands of the learned District Judge, after I.A.No.2 of 2020 is disposed of appropriately.

Resultantly:

(a) O.P(C)No.462 of 2020 is allowed and

Ext.P9 order in I.A.No.2 of 2020 in CM.Appeal No.4 of 2020 is set aside; with a consequential direction to the said Court to reconsider this application in terms of law, untrammeled by anything stated in the said order.

(b) O.P(C) No.229 of 2020 is allowed and

Ext.P9 order in C.M.Appeal No.4 of 2020 is set aside; with a consequential direction to the said Court to reconsider this appeal, based on the decision to be taken by it in I.A.No.2 of 2020. Since I notice that the suit has been pending for a couple of years now, I deem it appropriate that the learned District Judge

comply with the directions in this judgment

within a short time frame. I am of the view that it will be appropriate that the said Court disposes of I.A.No.2 of 2020 within a period of two weeks from the date of receipt of a copy of this judgment, for which purpose I direct the parties to mark appearance before the said Court on 03/07/2020. In the meanwhile, until the District Court passes an order in I.A.No.2 of 2020 in terms of this judgment, the interim injunction granted by this Court, as per which the respondent has been directed not to make any further construction, shall continue to be in force. These original petitions are thus ordered. Sd/- DEVAN RAMACHANDRAN JUDGE MC/29.6.2020

APPENDIX OF OP(C) 229/2020 PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PLAINT IN OS 391/18 OF THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM EXHIBIT P2 TRUE COPY OF THE REPORT OF TH ADVOCATE COMMISSIONER IN OS 391/18 OF THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM EXHIBIT P3 TRUE COPY OF THE PETITION IA 6355/18 IN OS 391/18 OF THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM EXHIBIT P4 TRUE COPY OF THE PETITION IA 7976/18 TO REVIEW THE ORDER IN IA 6355/18 IN OS THIRUVANANTHAPURAM EXHIBIT P5 TRUE COPY OF THE ORDER PASSED IN IA THIRUVANANTHAPURAM EXHIBIT P6 TRUE COPY OF THE PETITION IA 8208/18 FILED IN OS 391/18 OF THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM FOR POLICE PROTECTION EXHIBIT P7 TRUE COPY OF THE MEMORANDUM OF APPEAL CMA 4/2020 EXHIBIT P8 TRUE COPY OF THE PETITION FILED BY THE PETITIONER TO CONDONE THE DELAY IN FILING THE APPEAL EXHIBIT P9 TRUE COPY OF THE ORDER IN CMA 4/2020 OF THE DISTRICT JUDGE NO 11, THIRUVANANTHAPURAM RESPONDENT'S/S EXHIBITS: EXHIBIT R1 THE TRUE COPY OF THE ORIGINAL PETITION, OP(C)3379/2019, WHICH IS FILED BY THE PRESENT PETITIONER BEFORE THIS HON'BLE COURT. EXHIBIT R2 THE TRUE COPY OF ORDER DISMISSING THE

OP(C)3379/2019 BY THIS HON'BLE COURT DATED 09/01/2020. EXHIBIT R3 THE TRUE COPY OF THE ORDER DATED PETITION) IN CMA.04/2020 OF THE HON'BLE DISTRICT COURT, THIRUVANANTHAPURAM. EXHIBIT R4 THE TRUE COPY OF THE ORDER IS EXT.P3/COUNTER INJUNCTION PETITION IN I.A.NO.6355/2018 DATED 05/10/2018 IN O.S.NO.391/2018 OF THE HON'BLE MUNSIFF'S COURT-II, THIRUVANANTHAPURAM. EXHIBIT R5 THE TRUE COPY OF THE ORDER DATED INJUNCTIONPETITION (I.A.NO.1863/2018) FILED BY THE PETITIONER / BHARATAN, IN

OS.NO.391/2018 OF THE HON'BLE MUNSIFF'S COURT-II, THIRUVANANTHAPURAM. EXHIBIT R6 TRUE COPY OF SALE DEED NO.69/01/2018 DATED 06/01/2018 OF MALAYINKIL SRO EXECUTED IN FAVOUR OF MRS.BEENA (WIFE OF THE RESPONDENT) BY S.P.JEENA. EXHIBIT R7 ORIGINAL PHOTOGRAPHS SHOWING THE PETITIONER'S A SCHEDULED PROPERTY, WITH MOTORABLE ROAD ACCESS, AND PARKED VEHICLES IN FRONT OF HIS HOUSE. EXHIBIT R8 THE TRUE COPY OF THE PLAINT IN O.S.371/2018 DATED 06/03/2018, ON THE FILE OF THE HON'BLE MUNSIFF'S COURT-II, THIRUVANANTHAPURAM, FILED BY THE RESPONDENT'S WIFE AGAINST THE PETITIONER HEREIN. EXHIBIT R9 TRUE COPY OF ORDER OF INJUNCTION IN I.A.NO.1793/2018 IN O.S.371/2018 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT-II, THIRUVANANTHAPURTAM. EXHIBIT R10 TRUE COPY OF COMISSION REPORT IN I.A.NO.1794/2018 IN O.S.371/2018 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT-II, THIRUVANANTHAPURAM.

EXT.P1, IN O.S.391/2018 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT-II, THIRUVANANTHAPURAM. EXHIBIT R12 PHOTOGRAPHS SHOWING THE ACTS OF OBSTRUCTION AND VIOLATION OF THE INJUNCTION ORDER (EXHIBIT R4) COMMITTED BY THE PETITIONER/PLAINTIFF, HIS WIFE AND GOONDAS AND PREVENTING THE RESPONDENT FROM CONSTRUCTING THE COMPOUND WALL.

APPENDIX OF OP(C) 462/2020 PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PLAINT IN OS 391/18 OF THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM EXHIBIT P2 TRUE COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER IN OS 391/18 OF THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM EXHIBIT P3 TRUE COPY OF THE PETITION IA 6355/18 IN OS THIRUVANANTHAPURAM EXHIBIT P4 TRUE COPY OF THE PETITION IA 7976/18 TO REVIEW THE ORDER IN IA 6355/18 IN OS 391/18 OF

THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM EXHIBIT P5 TRUE COPY OF THE ORDER PASSED IN IA 7976/18 OF THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM EXHIBIT P6 TRUE COPY OF THE PETITION IA 8208/18 FILED IN OS 391/18 OF THE MUNSIFF COURT NO 11 AT THIRUVANANTHAPURAM FOR POLICE PROTECTION EXHIBIT P7 TRUE COPY OF THE MEMORANDUM OF APPEAL IN CMA 4/2020 BEFORE THE ADDITIONAL DISTRICT JUDGE AT THIRUVANANTHAPURAM EXHIBIT P8 TRUE COPY OF THE PETITION IA 2/2020 FILED BY THE PETITIONER TO CONDONE THE DELAY IN FILING THE APPEAL EXHIBIT P9 TRUE COPY OF THE ORDER DATED 8/1/2020 IN IA 11, THIRUVANANTHAPURAM RESPONDENT'S/S EXHIBITS: NIL MC (TRUE COPY) PA TO JUDGE

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