

George Vs. the CochIn Devasom Board

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Court : Kerala

Decided On : Jul-06-2010

Judge : Thomas P. Joseph, J.

Appeal No. : W.P. (C) No. 20833 of 2010 (O)

Appellant : George

Respondent : The CochIn Devasom Board

Advocate for Def. : No Appearance

Advocate for Pet/Ap. : P. Santhosh, Adv.

Judgement :

Thomas P. Joseph, J.

1. Standing Counsel for respondent takes notice.

2. Prayer in this Writ Petition filed by the defendant in the suit - O.S. No. 625 of 2007 of the court of learned Second Additional Munsiff, Thrissur is to keep proceeding in E.P. No. 1736 of 2009 in that case in abeyance for such period as this Court deems fit and also for a direction to the learned Additional Munsiff-I, Thrissur to restore Exts.P3 to P5 applications and dispose of the same within a time limit to be prescribed by this Court.

3. Respondent-plaintiff sued petitioner for eviction from the suit building and for other reliefs. Case was brought up for trial in the list on 18.08.2008. As petitioner remained absent and there was no representation an ex parte decree was passed. Petitioner filed Ext.P3, application to set aside the ex parte decree accompanied by a petition to condone the delay of 508 days claiming that since he was laid up due to old age illness such as sodium deficiency, etc., and his counsel was also laid up due to cardiac problem himself and counsel could not appear in court on the day case was listed for trial and that petitioner learnt about the ex parte decree only when he received notice from the executing court. Exhibit P3, application along with the accompanying application was posted on 22.03.2010. But it happened that the then counsel for petitioner could not appear on that day and the said applications were dismissed for default. To restore those applications petitioners filed Exts.P6 to P8, applications. Reason stated is that counsel who was then appearing for petitioner, with the idea of coming to the court of learned Munsiff, Thrissur by the end of roll call had gone first to the Fast Track Court No. II on the impression that Ext.P3 and connected applications will be called only at the end of roll call. But by the time he reached the court of learned Munsiff it happened that the applications were called and dismissed for default. It is stated that petitioner has valid contentions to be urged in the suit such as there was an option for petitioner to renew the lease and that himself and deceased Sankaran Nair paid a total sum of Rs. 75,000/- to the respondent which has not been taken into account while claiming rent arrears. Learned Counsel states that Exts.P6 and P8 are posted in August, 2010 but the property is scheduled to be delivered on 08.07.2010 and if before Exts.P6 to P8, applications are disposed of property is delivered petitioner will be put to irreparable injury and loss. Learned Standing Counsel would contend that decree was put in execution by filing E.P. No. 1736 of 2009 and order dated 08.06.2010 appended to the Writ Petition shows that petitioner has been making payment towards rent arrears as per the decree and hence it is idle for him to now contend that the ex parte decree is liable to be set aside. Petitioner contended that amount being paid was arrears of rent at the rate of Rs. 550/- per month from 01.10.2006 onwards. He states that substantial amount has been paid on that count.

4. I am not at the question whether Exts.P6 to P8, applications are liable to be allowed, and no direction in that way can be issued to the court below. For, that is a matter within the judicial discretion of that court. But it is required to dispose of those applications before delivery of the property is effected. As such I am persuaded to direct that delivery of property in execution of the decree in O.S. No. 625 of 2007 of learned Second Additional Munsiff, Thrissur will stand in abeyance for a period of two months from this day or until Exts.P6 to P8 are disposed of, whichever is earlier. Learned Counsel for petitioner undertakes that petitioner will file necessary application to advance hearing of Exts.P6 to P8, applications within two weeks from this day.

Resultantly, this Writ Petition is disposed of in the following lines:

(i) Delivery of property pursuant to the decree in O.S. No. 625 of 2007 of the court of Additional Munsiff-II, Thrissur will stand in abeyance for a period of two months from this day or till Exts.P6 to P8, applications are disposed of whichever is earlier.

(ii) Petitioner shall take steps to advance hearing of Exts.P6 to P8 applications, within two weeks from this day.

(iii) Petitioner shall deposit in the executing court arrears of rent/damages for use and occupation as the case may be at the rate of Rs. 550/- per month from 01.10.2006 till 30.06.2010 (less the amount already paid) within two weeks from this day.

(iv) Petitioner shall continue to deposit in the executing court at the rate of Rs. 550/- per month from 01.07.2010 till disposal of the execution petition.

(v) Amount deposited by petitioner can be withdrawn by the respondent.

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