

IN THE COURT OF THE SUBORDINATE JUDGE (ADDL) OF PALAKKAD

Present: Smt.Devika Lal, Additional Sub Judge.

Friday, the 21st day of July, 2023
(30th day of Ashadha 1945 S.E.)

INTERLOCUTORY APPLICATION NO.01/2022
IN INTERLOCUTORY APPLICATION (RESTORATION) No.2233/2022
IN ORIGINAL SUIT No.08/2002

Petitioners/Defendant Nos.2 to 5 :

1. Karuppaswamy Pillai (Died)
2. Krishnankutty, aged 65 years, S/o.Karuppuswamy Pillai, Pittupparayil, Chithali amsom, Alathur Taluk, Palakkad District.
3. Ramachandran, aged 68 years, S/o.Karuppuswamy Pillai, residing at Sivani Nagar, Para Road, Kanjikkode amsom, Palakkad Taluk.
4. Thankamma Amma, aged 86 years, W/o.Karuppuswamy Pillai, Pittupparayil, Chithali amsom, Alathur Taluk, Palakkad District.
5. Sarojini alias Padmavathi, aged 70 years, D/o.Karuppuswamy Pillai, Nechikkalkkattil, Chithali amsom, Alathur Taluk, Palakkad District.
6. Pushpalatha.

Vs.

Respondents/Plaintiffs :

1. Sinkaran (Died)
2. Nagarathnam, aged 70 years, W/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.
3. Suresh, aged 48 years, S/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.
4. Sujatha, aged 45 years, D/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.
5. Krishnaveni, aged 42 years, D/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.
6. Vijayalakshmi, aged 40 years, D/o.Late Sinkaran, Pazhaya Kammathil, Chithali amsom, Alathur Taluk, Palakkad District.

The above petition coming on this day for final hearing before me in the presence of Sri.V.Ramakrishnan Advocate for petitioners and Sri.C.Mohanram & Sri.M.Raveendran, Advocates for R2 to R6; R1 died; and this Court passed the following:-

ORDER

This is the order in the petition filed for condoning the delay of 676 days in filing the petition for setting aside the *ex-parte* decree passed in O.S No. 08/2002 on the file of this Court. The petitioners and the respondents herein were the defendants and the plaintiffs respectively in the above suit.

2. The petition averments, in brief, are as follows:- The above suit was decreed *ex-parte* on 30.11.2020. There was no willful default on the part of the petitioners in not appearing before this Court. Due to the Covid pandemic, the petitioners could not appear before the Court. When the petitioners received the notice in E.P No.345/2021, they came to know about the *ex-parte* decree against them. The defendant no.6 died on 14.12.2017 and the said fact was suppressed by the respondents during the trial of the above suit and they had obtained the *ex-parte* decree. Hence the said decree is not maintainable. There was delay of 676

days in filing the above R.PIA and it may be condoned and the petition may be allowed.

3. The respondent no.1 died during the suit and his heirs were already impleaded. On receipt of notice, the respondents no.2 to 5 filed a common counter in which it is stated as follows:- The reason of Covid pandemic stated in the petition is false. There was no suppression on the part of the respondents as alleged in the petition. The learned Counsel for the petitioners had not submitted about the death of defendant no.6 before the Court or the Land Tribunal. The petition was filed only for dragging the execution proceedings. No proper reason was furnished for condoning the delay. Hence the petition may be dismissed with costs.

4. Heard both sides.

5. The points that arise for determination are as follows:-

- (i) Whether the prayer is allowable?
- (ii) What is the order as to costs?

6. **Point No.(i):-** On verification of the records, it is seen that the delay in filing the above R.P.I.A is 676 days which would come around almost 2 years. It is apparent that it is an inordinate delay and sufficient reason has to be furnished for condoning the said delay. The reason stated

by the petitioners is that they could not appear on the day of list due to Covid pandemic restrictions. Even if it is taken as true for an argument sake, then also what prevented the petitioners from intimating the Counsel concerned regarding their difficulties in attending the Court, is not explained by the petitioners. During Covid restrictions there was online facility and all the Counsels appeared through online. If the Counsel was intimated by the petitioners, then he would definitely brought it to the notice of the Court. The Courts were taking a very liberal approach during the period of Covid restrictions. But the petitioners had taken the trial of the list case so lightly and they had not done anything on their part.

7. It is an admitted fact that the petitioners were aware of the suit and even then they had not enquired about the proceedings of the suit till they receive the notice in the execution proceedings. It is not at all expected from a prudent man and hence it can only be treated as a tactic to delay the execution proceedings. It is needless to say that the reason shown for condoning the inordinate delay of 676 days, is not at all sufficient and it is only a name-sake reason. Accordingly, the prayer is disallowed. This point is found against the petitioners.

8. **Point No.(ii)**:- As far as the costs of the petition is concerned, I find no reason to deviate from the normal rule and hence the costs shall follow the event. This point is found accordingly.

In the result, the petition is dismissed with costs.

(Dictated to the Confidential Assistant, typed by her in Office Computer, corrected and pronounced by me in Open Court, on this the 21st day of July, 2023)

Additional Sub Judge
Palakkad

APPENDIX : Nil

Additional Sub Judge
Palakkad

Typed by : Sajitha.R
Compared by : Sahadevan.M

Fair/Copy of Order
in IA.No.1/2022
in RPIA No.2233/2022
in OS No.08/2002
Dated: 21.07.2023