



2025:KER:19232

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946OP(C) NO. 447 OF 2024

RP NO.22 OF 2022 OF ASSISTANT SESSIONS COURT/SUB COURT/COMMERCIAL
COURT, NEYYATTINKARA ARISING OUT OF THE ORDER/JUDGMENT DATED 24.06.2023 IN
OS NO.54 OF 2022 OF ASSISTANT SESSIONS COURT/SUB COURT/COMMERCIAL
COURT, NEYYATTINKARA

PETITIONER/S:

SHANAVAS.M, AGED 40 YEARS
S/O.MYTHEENKANNU, T.C.11/1935, THOTTUVARAMBU VEEDU, KOWDIYAR
VILLAGE, PLAMMODU, PATTOM.P.O, THIRUVANANTHAPURAM, PIN -
695004

BY ADVS.
V.PHILIP MATHEWS
G.R.BILAHARI
ASHISH MATHEW JOHN

RESPONDENT/S:

SUNI @ SUNITHA KUMARI
AGED 39 YEARS
D/O. VIMALA POTTAVILA VEEDU, KODUNGANNOOR.P.O. VATTIYOORKAVU
VILLAGE NOW RESIDING AT VALIYAVILA VEEDU, KOTTUKALKONAM
KATTACHALKUZHI.P.O. BALARAMAPURAM VILLAGE, PIN - 695501

BY ADV LATHEESH SEBASTIAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03.03.2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT(Dated this the 3rd day of March 2025)

The petitioner is the plaintiff, and the respondent is the defendant in O.S.No.54 of 2022, on the files of the Sub Court, Neyyattinkara. The suit was filed for specific performance of contract. As the defendant did not appear before the court and there was no representation on 1.8.2022, the defendant was set ex-parte, evidence was adduced on the side of the plaintiff, and the suit was decreed on 30.8.2022.

2. The defendant filed R.P.No.22 of 2022 to set aside the ex-parte decree and I.A.No.1 of 2022 to condone the delay in filing the R.P. The petitioner filed an objection to the restoration application as Ext.P5. The court below, by Ext.P6 common order dated 24.06.2023, allowed I.A.No.1 of 2022 and R.P.No.22 of 2022, on payment of cost of Rs.6,000/- to the plaintiff. The petitioner has filed this O.P.(C) challenging Ext.P6.



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3. Heard Shri.V. Philip Mathews for the petitioner and Sri.Latheesh Sebastian for the respondent.

4. The counsel for the petitioner argued that the trial court was not justified in allowing the Petition to set aside the ex-parte decree as the defendant had not shown sufficient cause for condoning the delay and for not appearing before the court on the day fixed. Based on the decree obtained, the petitioner has spent more than Rs.2 lakhs as the value of the stamp, for executing the Ext.P2 sale deed. This aspect has not been taken into consideration by the trial court when Ext.P6 was passed. The court below ought to have taken note of the value of the stamp and should have granted the same amount to the plaintiff as cost.

5. On the other hand, the counsel for the respondent argued that on getting notice in the case, the witnesses to the sale agreement was entrusted to conduct the case by appointing a counsel, but they did not do so. Thus, the defendant was set ex-



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parte. It was not a fault on the side of the defendant, but on the person to whom the defendant entrusted the case. Therefore, the same cannot be made as a ground against the respondent. The delay in filing Ext.P3 is 88 days. The court below has rightly considered the averments in the petition to set aside the ex-parte decree.

6. On going through the averments in support of the petition, for setting aside the ex-parte decree and delay condonation application, I am satisfied that the court below is justified in taking a lenient view and allowing payment of cost. It is settled proposition of law that as far as possible, the *lis* should be decided on merits and not on technicalities. In **Robin Thapa v. Rohit Dora [(2019) 7 SCC 359]**, the apex court held that ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties and that litigation should not be terminated by default, either of the plaintiff or defendant.



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7. The counsel for the petitioner argued that the cost of stamp papers purchased for executing Ext.P2 sale deed should have been granted to the plaintiff as cost, as it was spent out of his pocket.

8. Counsel for the respondent relied on the judgment of the apex court in **Committee – GFIL v. Libra Buildtech Private Limited and others** (2015 KHC 5577), and argued that the plaintiffs have a right to claim a refund of the amount of stamp duty since the court has set aside the decree by which the Ext.P2 sale deed was executed. He also relied on another judgment of the apex court in **Poornima Advani (Dr.) v. Government of NCT** (2025 KHC online 6181), wherein the apex court held that a person who claims a refund of stamp duty is also entitled to get interest on the same. The trial court is convinced of the fact that sufficient cause has been shown for condoning the delay in filing the restoration petition and allowed the same, on payment of cost.



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I do not find any perversity or illegality in Ext.P6 order.

Therefore, no interference is warranted with the said order.

In view of the authoritative pronouncements, I am of the view that the petitioner is at liberty to apply for a refund of stamp duty before the concerned authority. Therefore, it cannot be said that the amount spent by him as stamp duty cannot be substituted.

This O.P.(C) is disposed of with the above observation.

Sd/-

**BASANT BALAJI
JUDGE**

dl/



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APPENDIX OF OP(C) 447/2024

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF PLAINT O.S.NO.54/2022 ON THE FILE OF SUB COURT, NEYYATTINKARA FILED ON 6.7.2022
Exhibit P2	TRUE COPY OF SALE DEED NO.903/2023 DATED 21.3.2023 EXECUTED BY LEARNED SUB JUDGE IN FAVOUR OF PETITIONER
Exhibit P3	TRUE COPY OF PETITION DATED 24.11.2022 PRAYING TO SET ASIDE EX-PARTE DECREE IN O.S.NO.54/2022
Exhibit P4	TRUE COPY OF PETITION DATED 26.11.2022 PRAYING TO CONDONE DELAY OF 88 DAYS IN FILING EXHIBIT P3 PETITION
Exhibit P5	TRUE COPY OF COUNTER AFFIDAVIT DATED 20.6.2023 FILED BY PETITIONER TO EXHIBITS P3 AND P4
Exhibit P6	CERTIFIED COPY OF COMMON ORDER DATED 24.6.2023 IN R.P.22/2022 & I.A.01/2022 IN O.S.54/2022 ON THE FILE OF SUB COURT, NEYYATTINKARA
Exhibit P7	TRUE COPY OF JUDGMENT DATED 31.5.2023 IN O.P.(C) NO.1020 OF 2023

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