

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).22907/2009

(From the judgement and order dated 03/02/2009 in WP No.
32033/2006 of The HIGH COURT OF KERALA AT ERNAKULAM)

DASAN PILLAI Petitioner(s)

VERSUS

CHONAPPALLIYIL ENTERPRISES & ORS. Respondent(s)

(With appln(s) for c/delay in filing SLP)

Date: 27/07/2011 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s) Mr. K. Radhakrishnan, Sr. Adv.
Mr. Imtiaz Ahmed, Adv.
Ms. Nagma Imtiaz, Adv.
M/S. Equity Lex Associates, Adv.

For Respondent(s) Mr. P.I. Jose, Adv.
Mr. K. Rajeev, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

In terms of the signed order the appeal is allowed and the order dated 3.2.2009 of the High Court and the order dated 15.11.2006 of the executing court are set aside. The order dated 25.2.2004 is recalled. The application filed by the appellant is restored to the file of the executing court with a direction to dispose of the same in accordance with law on merits expeditiously after notice to parties, uninfluenced by the observations of the High Court in the order dated 3.2.2009.

(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5997 OF 2011
[Arising out of SLP [C] No.22907/2009]

Dasan Pillai
Appellant

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Vs.

O R D E R

Delay condoned. Leave granted. Heard.

2. The appellant claiming to be the auction purchaser of the disputed property in a revenue sale, filed an application under Order 21 Rule 99 of the Civil Procedure Code in an exception proceedings initiated by 13th respondent Bank as decree holder in a money suit where the said property was brought to sale and purchased by the 18 th respondent. The said application filed by the appellant was dismissed for non-prosecution, on 25.2.2004 by the Executing Court. The appellant filed an application for restoration of his application. That application was dismissed on 15.11.2006. The writ petition filed by the appellant challenging the said order was dismissed on 3.2.2009 on the ground that the appellant did not show
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sufficient cause for restoring the application. The High Court also made a passing observation that application under Order 21 Rule 99 of the Code was not maintainable. Feeling aggrieved, the appellant has filed this appeal by special leave.

3. Two submissions are made by the appellant. Firstly, it is submitted that sufficient cause was made out for his absence and therefore the finding that no reason was made out for restoration was erroneous. Secondly, it is submitted that High Court while dismissing the writ petition holding that no ground was made out for restoring the application, ought not to have made a casual observation on merits, without full consideration, that

the application was not maintainable.

4. Notice was issued by this court on 31.8.2009 on the limited question as to why the restoration application should not be allowed and the execution court be directed to decide the matter on merits. The appellant has stated that the case was listed for evidence on 24.2.2004. That day was declared as a public holiday on account of the death of the Governor. The appellant therefore thought that the date of hearing will be informed to him. However, the case was called on the very next date (25.2.2004) and

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was dismissed on the ground that he was not present. In these circumstances, he made an application for restoration immediately, that is, on 27.2.2004. When 24.2.2004 was declared as a holiday, obviously the court could not take up the matter on the very next day, without notice and dismiss it for non-prosecution. If a particular working day is declared as a holiday due to unforeseen circumstances, the party should have an opportunity to know the date to which the case is adjourned. The application could not have been dismissed on 25.2.2004 for non-appearance. When the appellant filed a writ petition, the High Court ought to have interfered with the matter.

5. This appeal is therefore allowed and the order dated 3.2.2009 of the High Court and the order dated 15.11.2006 of the executing court are set aside. The order dated 25.2.2004 is recalled. The application filed by the appellant is restored to the file of the executing court with a direction to dispose of the same in accordance with law on merits expeditiously after notice to parties, uninfluenced by the observations of the High Court in the order dated 3.2.2009.

(R. V. Raveendran) J.

New Delhi;
July 27, 2011.

(A. K. Patnaik) J.