



2023/KER/50122

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

THURSDAY, THE 17th DAY OF AUGUST 2023 / 26TH SRAVANA, 1945

CRP NO. 336 OF 2021

AGAINST THE JUDGMENT DATED 02.08.2021 IN CMA No.28/2020 OF DISTRICT
COURT, PALAKKAD

REVISION PETITIONER/APPELLANT:

VASU, AGED 54 YEARS,
S/o LATE KANDACHAMI, THEKKEKADU,
PATTANCHERY VILLAGE, CHITTUR TALUK,
PALAKKAD - 678556.

BY ADVS. R.HARISHANKAR
PARVATHY NAIR

RESPONDENT/RESPONDENT:

NARAYANAN, AGED ABOUT 62 YEARS,
S/o KITTU, AYYAN VEEDU, CHALLA,
PATTANCHERY VILLAGE, CHITTUR TALUK,
PALAKKAD - 678556.

BY ADVS. RAJESH SIVARAMANKUTTY
K.VIJINA

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON
17.08.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ORDER**

An application for setting aside ex parte decree along with an application for condonation of delay which comes to 1026 days was dismissed by the trial court, against which an appeal was preferred, wherein also, the defendant utterly failed and the appeal ended in dismissal. It is against that judgment, the defendant came up in revision.

2. A suit for specific performance and a decree that can be granted for the performance of contract for sale stands governed by at least two hurdles namely, Section 16 and 20 of the Specific Relief Act and it is an exception to the general principle governing exercise of judicial discretion. The equity principle incorporated under Section 16 of the Act is yet another legal hurdle without which no decree for specific performance can be granted. While granting decree for specific performance, the court is duty bound to address readiness and willingness under Section 16 of the Act and there should be a finding on that point.



Then, the court must address the discretion that can be exercised under Section 20 of the Act. It is also permissible to grant compensation on account of exercise of discretion under Section 20 of the Act so as to compensate the plaintiff and the legal position is very much settled by the three Judge Bench of Apex Court in **Her Highness Maharani Shantidevi P. Gaikwad v. Savjibhai Haribhai Patel and Others** [2001 KHC 1100 = AIR 2001 SC 1462] and it was subsequently followed by this court in **Anappath Parakkattu Vasudevakurup and Others v. Haridasan** [2021 (6) KHC 656]. Necessarily, a judgment in a suit for specific performance of the contract must reflect all the relevant aspects, especially the discretion to be exercised under Section 20 of the Act, even though the defendant remained ex parte. That cardinal principle was not adhered to by the trial court as well as the first appellate court. In fact, the decree passed by the trial court and the judgment thereof suffers material defects.

3. In the matter of condonation of absence of party, especially in a suit for specific performance, the court



has to take a liberal view so as to advance justice and not to defeat, unless the negligence is so grave to the extent of outweighing the benefit that can be obtained by the party by prosecuting or defending the suit. It is permissible to penalize the party in terms of money for the laches, not by curtailing the valuable right to proceed with the suit or to defend the suit, especially in the matter of specific performance. At this juncture, the learned counsel for the respondent suggested an amount of Rs.25,000/- by way of cost. But, having regard to the dispute involved in the matter and the defective nature of the judgment rendered by the trial court, I am of the view that it is fit and proper to grant an opportunity to the defendant by ordering a cost of Rs.10,000/- (Rupees ten thousand only). Hence, ordered accordingly and it shall be deposited before the trial court within 15 days from the next posting date. On such deposit, the orders passed by the trial court as well as the first appellate court in the application for condonation of delay as well as the application for setting aside the ex parte decree will



stand set aside by restoring the suit on the file and by condoning the respective delay occasioned, for which the parties shall appear before the trial court on 07.09.2023.

The Civil Revision Petition will stand allowed accordingly.

Sd/-

P . SOMARAJAN

JUDGE

DMR/-