

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

THURSDAY, THE 9TH DAY OF SEPTEMBER 2021 / 18TH BHADRA, 1943

RSA NO. 496 OF 2021

[Against the order dated 27.02.2021 in IA No.1/2020 in AS No.48/2020 of the Additional District Court-I, Mavelikkara confirming the judgment dated 29.11.2018 in O.S.No. 10/2018 of the Sub Court, Mavelikkara]

APPELLANT/APPELLANT/PLAINTIFF:

THAHAKUNJU @ THAHAKUTTY,
AGED 65 YEARS
S/O. KOYAKUTTY, THANDALATHU VEEDU @ THANDALATHU
THARAYIL, VALACHAL MURI, VALLIKUNNAM VILLAGE,
MAVELIKARA TALUK, ALAPPUZHA DISTRICT.
BY ADVS.
S.SHANAVAS KHAN
S.INDU

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1 CHANDRA SEKHARA PILLAI,
AGED 65 YEARS,
RADHALAYAM, KARAZHMA MURI, VALLIKUNNAM
VILLAGE, MAVELIKARA TALUK, ALAPPUZHA DISTRICT -
690 501.
- 2 RADHAMANI PILLAI,
AGED 61 YEARS,
W/O. CHANDRA SEKHARA PILLAI, RADHALAYAM,
KARAZHMA MURI, VALLIKUNNAM VILLAGE, MAVELIKARA
TALUK, ALAPPUZHA DISTRICT - 690 501.
BY ADVS.
K.S.HARIHARAPUTHRAN
S.R.PRASANTH
BHANU THILAK

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 07.09.2021, THE COURT ON 09.09.2021
DELIVERED THE FOLLOWING:**

R.S.A.No.496 of 2021

..2..

J U D G M E N T

This appeal is directed against the order dated 27.02.2021 in IA No.1/2020 in AS No.48/2020 of the Additional District Court-I, Mavelikkara confirming the judgment dated 29.11.2018 in O.S.No. 10/2018 of the Sub Court, Mavelikkara.

2. The appellant is the plaintiff in O.S.No.10/2018 on the file of the Sub Court, Mavelikkara. The suit was for return of money filed by the plaintiff against the defendants pursuant to an agreement for sale. The defendants are the respondents herein. The parties are hereinafter referred to as referred in the original suit.

3. The plaint averments are that the

R.S.A.No.496 of 2021

..3..

defendants are the owners of landed property comprised in Re-Sy.No. 238/1/14,252/4 and 238/11 having an extent of 61.4 ares of property in Block No. 15 of Vallikunnam Village, Mavelikkara Taluk. The defendants entered into an agreement on 27.2.2015 with the plaintiff agreeing to sell the property for Rs.33,000/- per cent. At the time of entering into the agreement, the plaintiff paid Rs.10 lakh as advance sale consideration, and the sale deed was agreed to be executed on or before 27.8.2015. Though the plaintiff was willing to perform his part, the defendants were not willing to execute the sale deed. Hence, the suit.

4. The defendants entered appearance and filed written statement contending that

R.S.A.No.496 of 2021

..4..

the plaintiff was responsible for breaking the contract. According to the defendants, the advance amount was returned, but no receipt was issued.

5. The trial court framed the issues and the case was posted for payment of balance court fee. As the same was not remitted, the suit was rejected. Hence, the plaintiff filed I.A.No. 418/2019 before the trial court for reviewing the order along with an application to condone the delay in filing the review petition. During the pendency of the application, the plaintiff remitted the balance court fee on 10.1.2020.

6. The trial court dismissed the review application stating that the proper remedy is to file appeal challenging the

R.S.A.No.496 of 2021

..5..

order rejecting the suit. Hence, the above IAs. were not pressed by the plaintiff. The applications were dismissed as not pressed.

7. Thereafter, the plaintiff filed AS No.48/2020 before the Additional District Court-I, Mavelikkara challenging the order dated 29.11.2018 in O.S.No.10/2018 passed by the trial court. Along with the appeal, he filed IA No. 1/2020 for condoning the delay of 639 days in filing the appeal. The first appellate court dismissed the appeal on the ground that reasons stated for condonation of delay are vague and cannot be accepted. Consequently, AS No.48/2020 was also dismissed.

8. Heard the learned counsel for the appellant and the learned counsel for the

R.S.A.No.496 of 2021

..6..

respondents.

9. When this appeal came up for admission on 23.7.2021, this Court admitted the appeal on the following substantial questions of law:-

1. When sufficient cause is shown to condone the delay, is it proper on the part of the first appellate court to dismiss the application for condonation of delay in filing the appeal?
2. When the plaint was rejected for non-payment of balance court fee, is it not proper on the part of the appellate court to exercise its discretion in condoning the delay instead of dismissing the appeal itself on technical reasons?
3. Instead of filing an appeal instantly, the plaintiff preferred a review petition by mistake before the trial court which rejected the plaint. In the circumstances, is it proper on the part of the first appellate court to dismiss the application for condonation of delay?

10. Learned counsel for the appellant contended that the non-payment of balance

R.S.A.No.496 of 2021

..7..

court fee is not willful or deliberate, but due to financial stringency and in fact, during the the pendency of IA Nos.418/2019 and 419/2019, he remitted the balance court fee on 10/1/2020. Elaborating on the submission, the learned counsel for the appellant contended that the delay occurred due to the reason that instead of filing an appeal due to rejection of suit, review petition was filed by mistake. The learned counsel further submitted that the appellant is having a good case and is interested in prosecuting the case.

11. It is true that the impugned order was passed as early as on 29.11.2018. The suit was rejected for non-payment of balance court fee. Rejection of plaint is a decree

R.S.A.No.496 of 2021

..8..

as defined under the Civil Procedure Code. True, judgment and decree passed by the court are to be challenged in accordance with law in accordance with the scheme of the CPC. Realising the mistake, the plaintiff filed the first appeal with an application to condone the delay. The review petition filed before the trial court was dismissed as not pressed to prefer an appeal challenging the judgment and decree of the trial court. During the pendency of the review petition, the entire court fee was admittedly remitted by the plaintiff.

12. When the first appeal was preferred with an application to condone the delay against the judgment and decree of the trial court, the first appellate court ought

R.S.A.No.496 of 2021

..9..

to have considered the application liberally rather than dismissing the same on technical grounds. When it comes to delay, it is not necessary on the part of the appellant to explain each and every day's delay. The plaintiff offered a reasonable explanation to condone the delay. To prove his bona fides, he paid the balance court fee as well. Under the circumstances, the first appellate court was not right in dismissing the application for condoning the delay. Since the application for condoning the delay was dismissed, the appeal was also dismissed. Resultantly, the decree and judgment of the trial court merged with the decree and judgment of the first appellate court.

13. When a suitor alleges before the

R.S.A.No.496 of 2021

..10..

court that he has a genuine grievance to be addressed before the court, it is always desirable to hear the matter on merits rather than disallowing the application for condoning the delay on technical grounds. The courts are functioning for the dispensation of justice and not to shut the mouth of a party. Hence, this Court is of the view that it is just and proper to allow the appeal on terms:-

In the result, the appeal is allowed on the following terms:-

1. The appellant shall pay an amount of Rs.3000/- (Rupees Three Thousand only) directly as evidenced by a memo to the respondents or deposit the above amount before the trial court on or before

R.S.A.No.496 of 2021

..11..

30.9.2021.

2. In case the amount is not paid as ordered herein above and the receipt or memo thereof is not produced, this appeal shall stand dismissed without any further order from this Court.
3. In case the receipt is produced before the trial court, the trial court shall proceed with the trial of the suit and dispose of the suit as early as possible.
4. There will be no order as to costs. Pending applications, if any, shall stand closed.

Sd/-

(N.ANIL KUMAR)
JUDGE

MBS/