

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

CRP.No. 1046 of 2007()

IA Nos.168 & 1544/06 in OS.190/2002 of SUB COURT, NEYYATTINKARA
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REVN. PETITIONER: Respondent/ PLAINTIFF:

SAMBASIVAN, S/O.KRISHNA PANICKER,
RESIDING AT MAHALEKSHMI BHAVAN,
CHOOZHALL DESOM, METHUKKUMMAL VILLAGE,
KOLLAMKODE.

BY ADV. SRI.J.HARIKUMAR
SRI.HARIKUMAR.S.

RESPONDENTS: Petitioners/DEFENDANTS:

1. SATHYARAJ, S/O.SADASIVAN,
KAMALA VILASOM BUNGLOW, VAZHAVILAKATHU THOPIL,
BALARAMAPURAM, THALAYAL DESOM, ATHIYANNOOR VILLAGE
BALARAMAPURAM.P.O.
2. PADMAKUMARI, D/O.KAMALAMMA,
RESIDING AT DO, DO.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

M.N.Krishnan, J.
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C.R.P.No.1046 of 2007
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Dated this the 30th day of November, 2007.

ORDER

This revision petition is preferred against the order of the Subordinate Judge, Neyyattinkara in I.A.Nos. 168 of 2006 and 1544 of 2006 in O.S.No.190 of 2002. Those applications were one for condoning the delay of 310 days in filing the petition to set aside the ex parte decree and the other is for setting aside the ex parte decree.

2. The contentions of the defendants is that the first defendant was admitted due to viral fever with Bronchitis from 5.12.2005 to 24.12.2005 and as his wife, the second defendant, was his bystander, they could not meet the Advocate on 7.12.2005, which resulted in an ex parte decree. The delay is attempted to be explained by contending that the wife was laid up with chicken pox and a relative passed away. The first defendant was examined as PW1 and the medical certificate reveals that he was treated as an outpatient. But the fact

remains that he was suffering from Bronchitis and viral fever. So far as the delay condonation application is concerned, the reasons given are of chicken pox and death of relative. I am not very happy with the explanation for the delay for the day today, but the fact remains that the wife was laid up with chicken pox and there was some calamities in the family. The court below appreciated those materials and exercised its judicial discretion to condone the delay and set aside the ex parte decree.

3. Going by the principles laid down in **Sreedhara Kurup v. Mickel** - 1968 K.L.T. 599, if the petitioners approached the court in time and some evidence is let in and if there are materials to show that there has been no gross negligence or misconduct, then the parties are entitled for a chance to hear the matter on merits. The contention that the wife would have come to the court on 7.12.2005 need not detain a long for the reason that it is she who looked after her husband. So on an over all analysis, I find that there is nothing perverse or illegal in the exercise of the judicial discretion done by the Subordinate Judge, which requires interference.

4. Therefore, I do not want to interfere with the

discretionary jurisdiction exercised by the learned Subordinate Judge in allowing the application. I hope and trust that the revision petitioner hereafter will not resort to the method of getting themselves set ex parte and then move an application for setting aside the ex parte decree. Being a suit of the year 2002, I direct the court below to bestow its attention and dispose of the matter within a time frame of four months from today.

Civil Revision Petition is dismissed.

M.N.Krishnan,
Judge.

ess 30/11