

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.HARILAL

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 29TH DAY OF NOVEMBER 2019 / 8TH AGRAHAYANA, 1941

FAO.No.133 OF 2019

AGAINST THE ORDER DATED 12-04-2019 IN E.A.NO.160/2018 IN

E.P.NO.150/2016 IN OS 221/2013 OF MUNSIF COURT, CHITTUR

APPELLANT/PETITIONER/DEFENDANT:

K.RAMDAS,S/O.KRISHNAN,AGED 47 YEARS,
RESIDING AT ALUMPARAMBU,CHERAMANGALAM P.O.,
MELARKKODE PANCHAYATH,CHERAMANGALAM AMSOM DESOM,
MELARKKODE VILLAGE,ALATHUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS/RESPONDENTS/PLAINTIFFS:

- 1 P.RAMASWAMY,S/O.PAZHANICHETTIAR,
AGED 58 YEARS,RESIDING AT 'MRIDULA NILAYAM',
VALLANGHI VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT-678 508.
- 2 MEENAMBIKA,W/O. P.RAMASWAMY,
AGED 49 YEARS,RESIDING AT 'MRIDULA NILAYAM',
VALLANGHI VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT-678 508.

R1-R2 BY ADV. SRI.JACOB SEBASTIAN
R1-R2 BY ADV. SRI.K.V.WINSTON
R1-R2 BY ADV. SMT.ANU JACOB

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
29-11-2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

C.S.Dias, J.

The appellant is the petitioner in E.A. No.160/2018 in E.P. No. 150/2016 on the files of the Court of the Munsiff, Chittur. The respondent in this appeal is the respondent in the application.

2. The appellant had filed E.A. No. 160/2018, to set aside the order dated 09.11.2018 passed in the execution petition, setting him ex-parte.

3. The application was opposed by the respondent, contending that the appellant had not shown sufficient cause for his absence on the posting date. He further contended that the application was filed under Order IX Rule 7 of the Code of Civil Procedure, instead of

Order XXI Rule 106 (1).

4. The court below, by the impugned order, dismissed the application on the ground that the appellant had not proved any sufficient reason for his non-appearance on 09.11.2018.

5. It is assailing the order passed by the court below that the above appeal is filed.

6. Heard, Adv. Rajesh Sivaramankutty, Counsel for the petitioner and Adv. Jacob Sebastian, Counsel for the respondents.

7. The reasons for dismissing the application by the court below was that, the appellant had not shown any sufficient cause in the application for his non-appearance on 09.11.2018 and that the Counsel for the appellant had endorsed no instructions on the

execution petition.

8. It is trite law in a catena of precedents of the Honourable Supreme Court as well as this Court, that applications to set aside ex-parte orders/decrees have to be leniently considered by courts, if sufficient cause is shown.

9. Taking into consideration the fact that the appellant was absent only on one posting date i.e., on 09.11.2018 and that his Counsel had endorsed “no instructions”, the court below ought to have put the appellant on notice and given him one more opportunity to contest the case.

10. As the appellant would be put to severe prejudice, if the execution proceeding is decided in his absence and not on merits,

we are of the considered view that the ex-parte order has to be set aside and the appellant be given one more opportunity to contest the execution petition on merits; but on condition of payment of costs to the respondent; to compensate him for the hardship and inconvenience.

11. Hence taking a lenient view in the matter, we set aside the order dated 12.04.2019 in E.A. No. 160/2018 in E.P. No.150/2016, on condition that the appellant pays an amount of ₹10,000/- (Rupees ten thousand only) as costs to the respondent or his counsel before this Court and files a memo to the effect, within a period of two weeks from today, failing which the impugned order will stand confirmed.

12. In the result, the above appeal is allowed on the following terms:

(i) Order dated 12.04.2019 in E.A. No. 160/2018 in E.P No.150/2016 of the Court of the Munsiff, Chittur is set aside, on condition that the appellant pays an amount of ₹10,000/- to the respondent or his counsel before this Court and files memo to the effect, within a period of two weeks from today, failing which the impugned order would stand confirmed.

(ii) If the appellant pays the amount within the stipulated time, the parties are directed to appear before the court below on 06.01.2020 either in person or through the counsel.

(iii) The Court of the Munsiff, Chittur
is directed to dispose of E.P.
No.150/2016 as expeditiously as
possible.

Sd/-
K. HARILAL
JUDGE

Sd/-
C.S. DIAS
JUDGE