
(2010) 08 KL CK 0249

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25679 of 2010 (O)

B. Sreekumar

APPELLANT

Vs

Vishnu, Parayaparambil

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Citation : (2010) 08 KL CK 0249

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : S. Sanal Kumar, for the Appellant; No Appearance, for the Respondent

Judgement

Thomas P. Joseph, J.—Defendant in O.S. No. 821 of 2005 of the court of learned Principal Munsiff, Alappuzha is the petitioner challenging common order refusing to condone the delay of one year and 305 days (to set aside the ex parte decree) and dismissal of application to set aside the ex parte decree as confirmed by learned District Judge in the C.M appeal.

2. Respondent obtained an ex parte decree for payment of money on 30-09-2006. After one year and 305 days petitioner filed Exts.P1 and P2, applications to set aside the ex parte decree and condone the delay. In the affidavit in support of the applications he stated that on receiving summons in the suit, he entrusted the matter to Adv. R. Uma Sankar but he did not hear anything from the advocate. On getting notice on the execution petition he learned that counsel had stopped practice and joined some bank as Legal Advisor. That according to him was the cause for delay. Respondent resisted the applications by Exts.P3 and P4, objections. Learned Munsiff dismissed applications vide Ext.P5 common order. That has been confirmed by the learned District Judge in Ext.P7, judgment in C.M.A. No. 38 of 2009. Learned Counsel states that petitioner has serious contentions to be raised in the suit and that delay was properly explained. According to the learned Counsel there is a factual mistake in the common order passed by learned Munsiff.

3. According to the petitioner he received summons and entrusted the case to Adv. R. Uma Sankar and learned about the decree only when he got notice of the execution petition. He stated that on enquiry he learned that Adv. R. Uma Sankar left practice to join some bank as Legal Advisor. Learned Munsiff has stated that there was nothing to show that case was entrusted to Adv. R. Uma Sankar and at any rate that lawyer was actively practicing in the court of learned Munsiff. Learned Counsel states that it happened that after joining the bank as Legal Advisor he quit that job and came back to the profession which is stated by learned Munsiff in the common order. Assuming so for the time being, evidence of petitioner as PW1 shows that he is an Autorickshaw driver and that his Autorickshaw was being halted near the office of Adv. R. Uma Sankar. Even as per his evidence at least 4-5 times a day he goes along the road in front of office of Adv. R. Uma Sankar. It is difficult to think that for about one year and 305 days petitioner did not even contact his counsel, having been stationed at such close proximity to the office of counsel. Learned Munsiff also observed that summons was ordered on 17-01-2006 and on 31-09-2006 it was seen that there was no vakalath or written statement filed on behalf of petitioner. Learned Munsiff observed that there is nothing on record to show that when the case was entrusted to Adv. R. Uma Sankar. Reason stated by petitioner to condone the delay did not appear to be correct to the courts below. The Supreme Court in *Pundlik J. Patil v. Executive Engineer* 2009 (1) KLT 25 has stated that when the reason for condonation of delay is found to be not correct no indulgence shall be shown. Having regard to the facts and circumstances of the case, I am not persuaded to think that this is a case where this Court should interfere in the exercise of its supervisory power with the order passed by learned Munsiff as confirmed by learned District Judge.

4. Learned Counsel requested that petitioner may be given an opportunity to get the matter referred to the adalath for settlement. I make it clear that it will be open to the petitioner to make a request in the executing court for the said purpose and if any such request is made executing court shall consider that request after hearing learned Counsel for respondent also and pass appropriate orders. In the circumstances stated by learned Counsel and to facilitate petitioner make the above request warrant of arrest issued to the petitioner shall remain in abeyance for a period of three weeks from today.

Writ petition is disposed of with the above direction.