
(2012) 02 KL CK 0034
In the High Court Of Kerala
Case No : OP (C) No. 65 of 2012 (O)

George Pathrose

APPELLANT

Vs

Bishop Jerome Trust

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2012) 02 KL CK 0034

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : T.K. Vipindas, Smt. P.K. Priya, Sri. K.V. Sree Vinayakan and Sri. K.M. Muhammed Hussain, for the Appellant; Alex N. Mathew (Kollam) by R1, R2, for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The petitioner is the defendant in O.S. No. 924 of 2005 on the file of the court of the Munsiff of Kollam. The suit as filed for mandatory injunction to direct the defendant to remove the telephone booth in the plaint schedule property. The suit was decreed on 11.3.2008. Challenging the judgment and decree of the trial court, the defendant filed A.S. No. 110 of 2008 on the file of the court of the First Additional District Judge, Kollam. On 16.11.2011, the appeal was dismissed for default. On 17.11.2011, the petitioner/appellant filed I.A. No. 1902 of 2011 to readmit the appeal. It is stated that the said application is posted to 3.3.2012.

2. It is submitted that the appellate court granted stay of execution of the decree. However, since the appeal was dismissed for default, the order of stay has also ceased to have operation. Meanwhile, on 28.11.2011, the respondents/decree holders filed Execution Petition No. 357 of 2011 to execute the decree.

3. The prayer in the Original Petition is to issue a direction to the appellate court to hear and dispose of I.A. No. 1902 of 2011 expeditiously and in the meanwhile to direct the executing court to keep in abeyance the proceedings in E.P. No. 357

of 2011.

4. In the facts and circumstances of the case, I am of the view that the petitioner is entitled to the relief prayed for. On the next day of the dismissal of the appeal for default, an application was filed to readmit the appeal. The Learned Counsel for the petitioner submitted that the first posting of that application is on 3.3.2012.

5. Accordingly, the Original Petition is allowed. There will be a direction to the First Additional District Court, Kollam, to hear and dispose of I.A. No. 1902 of 2011, as expeditiously as possible. Till the disposal of I.A. No. 1902 of 2011 in A.S. No. 110 of 2008, all the proceedings in E.P. No. 357 of 2011, Munsiff's Court, Kollam shall be kept in abeyance. It is made clear that the petitioner/appellant shall not seek any adjournment in the matter of hearing of I.A. No. 1902 of 2011.