

(2008) 10 KL CK 0014

In the High Court Of Kerala

Case No : Regular First Appeal No. 245 of 2008

Sankara Pillai

APPELLANT

Vs

Ramakumary and Others

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Citation : (2008) 10 KL CK 0014

Hon'ble Judges : Kurian Joseph, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : G. Ananthanarayanan, for the Appellant; P.R. Venketesh, for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The plaintiff in O.S.No.259 of2002, on the file of the Court of the Subordinate Judge of Mavelikara, challenges the judgment dated 10.12.2007, rejecting the plaint for non-payment of the balance court fee.

2. The suit was filed by the appellant for recovery of money. One-tenth court fee was paid. The suit was filed on 17.09.2002. From the certified copy of the B - Diary, produced by the learned counsel for the appellant for perusal, it is evident that the suit was posted on different dates from 2002 to 2007. The issues were not framed till 05.12.2007. The issues were framed only on 05.12.2007 when the case was posted in the special list for trial. On 05.12.2007, the court below passed an order directing the plaintiff to pay the balance court fee on or before 10.12.2007. On 10.12.2007, the plaint was rejected as the balance court fee was not paid. The plaintiff would be entitled to get a maximum period of 15 days" time to pay the balance court fee after framing of the issues. The court below did not grant sufficient time for payment of the balance court fee. The rejection of the plaint, to out mind, was not proper in the facts and circumstances of the case.

3. Accordingly, the judgment passed by the court below is set aside. The court below shall take the plaint on file, if the appellant/plaintiff pays the balance court

fee within fifteen days from today. The parties shall appear before the court below on 07.11.2008.

The Regular Second Appeal is allowed as above.