

Kerala High Court

Annamma Alias Omana vs Daniel Nadar Varghese Nadar on 18 June, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

RSA.No. 1311 of 2005()

1. ANNAMMA ALIAS OMANA, D/O.BHAGAVATHY,
... Petitioner

Vs

1. DANIEL NADAR VARGHESE NADAR,
... Respondent

2. THRESIAMMA, KANAKUZHI THADATHARIKATHU

3. BENEDICT, S/O.MANEUL, KALLUVETTANKUZH

4. MICHAEL, DO. DO.

5. MARTIN, DO. DO.

6. SABA, DO. DO.

7. BABY, DO. DO.

8. DANIEL NADAR, CHELLAYAN NADAR,

9. BHAGAVATHY MARY, W/O.GOPALAKRISHNAN

10. BABY, S/O.CHELLAYAN NADAR,

11. KOCHUKUTTAN MADALAMPARA, KENATTUVILA

12. JOHNSON, DO. DO.

13. ALPHONSA, DO. DO.

14. STEPHEN, DO. DO.

For Petitioner :SRI.V.SURESH

For Respondent :SRI.P.S.RAMESH KUMAR

The Hon'ble MR. Justice K.P.BALACHANDRAN

Dated :18/06/2008

O R D E R

K.P.BALACHANDRAN, J.

I. A. No.1291 of 2008,
C. M. Application No.833 of 2005 &
R. S. A. No.1311 of 2005

Dated this the 18th day of June, 2008

JUDGMENT

This Court vide order dt.02/06/08 directed the counsel for the appellant who was granted two weeks' time as prayed for to cure the defects, that defects are to be cured positively in two weeks. The defect was that service was not complete on respondents 3, 5, 6, 9 and 11 to 14 on C.M. Application No.833/05 seeking condonation of delay of 155 days in filing the R.S.A. The R.S.A is one filed on 15/11/05 with a delay of 155 days. Even after lapse of two and a half years the appellant was not able to have notice served on the respondents in the C.M. Application enabling this Court to pass order one way or the other in the delay condonation petition. Today counsel for the petitioner has filed I.A.1291/08 seeking for condonation of delay in taking steps. On perusal of the affidavit accompanying C.M.Application No.833/05, it is seen that the reasons assigned to have the delay condoned is quite unsatisfactory. The judgment under appeal was delivered on 31/01/04; copy of the judgment was applied for on 03/02/04; stamp papers called for on 01/06/04 were produced on 04/06/04 and though copy was ready and 18/03/05 was fixed as the date to appear and receive copy, it was received only after four months on 18/07/05. According to the petitioner, he was under the impression that his counsel would intimate him when copy is received and that in the meanwhile, he fell sick and was suffering from Asthma and Bronchitis and therefore, he could go over to the office only on 20/10/05 and could understand that the copies were taken delivery of by his lawyer on 18/07/05.

2. There is absolutely no evidence to show that the petitioner was having any ailment or that he was bedridden nor does he say that he was bedridden. Such lame excuses to cover up the wanton neglect on the part of the appellant coupled with the neglect on the part of the counsel or his clerk to receive copy of judgment when date was fixed to receive copy are not circumstances which enable such inordinate delay being condoned.

3. It is worthy to note that the successful party cannot wait indefinitely to see whether any appeal is filed from the judgment in his favour. Rights that have accrued to the successful party by reason of non-filing of the appeal cannot be lightly interfered with also when the defeated party files appeal at his own whims and fancies taking his own sweet time. I am not satisfied that just and sufficient cause exists to condone the delay of as much as 155 days in filing the appeal.

4. In the result, refusing to extent time prayed for vide I.A.1291/08, I dismiss the said I.A as also C.M.Application No.833/05 in compliance with the order dt.02/06/08. Consequently, this R.S.A also stands dismissed.

K.P.BALACHANDRAN, JUDGE kms/-