

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 13TH DAY OF OCTOBER 2022 / 21ST ASWINA, 1944

FAO NO. 77 OF 2022

AGAINST THE ORDER/JUDGMENT IN O.S.NO.2/2013 OF ADDITIONAL
DISTRICT COURT, NORTH PARAVUR

APPELLANT/PETITIONER-6TH DEFENDANT:

C.C.JOHNNY, AGED 66 YEARS,
S/O.C.T.CHERIAN, PROPRIETOR,
M/S.CEE CEE VIDEO MOVIES HAVING OFFICE AT 109,
1ST FLOOR, CHITHRA AVENUE SHOPPING INN,
CHOOCLAIMEDU HIGH ROAD, CHENNAI - 600 094.

BY ADVS.
PHILIP T.VARGHESE
THOMAS T.VARGHESE
MOHAMMED SIYAD M.F.
ACHU SHUBHA ABRAHAM

RESPONDENTS/RESPONDENTS-PLAINTIFF AND

DEFENDANTS 1 TO 5 AND 7 TO 9:

- 1 KISHORE, AKASH VILLA, KUNNUKARA P.O.,
ALUVA, ERNAKULAM - 683 578.
- 2 M/S.KRG MOVIES INTERNATIONAL NO.32
BHAGARATHI AMMAL STREET, T.N.NAGAR,
CHENNAI - 600 017.
- 3 SHANTHA RAJAGOPAL, W/O.LATE K.RAJAGOPAL,
NO.32, BHAGIRATHI AMMAL STREET, T NAGAR,
CHENNAI - 600 017.
- 4 RADHA PILLAI, D/O.K.RAJAGOPAL, 3A, SHANTHI
APARTMENTS, 15, SOUTH AVENUE, HARRINGTON ROAD,
CHETPET, CHENNAI - 600 031.
- 5 HARIPRIYA GANGADHARAN, W/O.K.R.GANGADHARAN,
NO.32, BHAGARATHI AMMAL STREET, T NAGAR,
CHENNAI - 600 017.

- 6 M/S.PALS COMMUNICATIONS PRIVATE LTD. AT
KADAKKADAN BUILDING, DOWN HILL, MALAPPURAM
REPRESENTED BY ITS CHAIRMAN C.H.NOUSHAD.
- 7 VIKRAM RAJ, VEGA ENTERTAINMENT
PRIVATE LIMITED, PLOT NO.29B, ROAD 8,
FILM NAGAR, JUBILEE HILLS,
HYDERABAD - 500 033.
- 8 THE VIJAYA COLOUR LABORATORY,
VADAPALANI, CHENNAI - 600 026.
- 9 K.B.SASINDRAN , S/O.K.BHASKAR,
DOOR NO.91/3, KAVERI STREET,
PALANIAPPA NAGAR, ALWARTHIRUNAGAR,
CHENNAI - 600 087.

BY ADVS.
ZAKEER HUSSAIN
SANDEEP GOPALAKRISHNAN
K.A.SANJEETHA
JINNU SARA GEORGE
ANAND VIMAL
ANJU DAVIS K.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 13.10.2022, ALONG WITH FAO.78/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 13TH DAY OF OCTOBER 2022 / 21ST ASWINA, 1944

FAO NO. 78 OF 2022

AGAINST THE ORDER IN I.A.NO.777/2019 IN O.S.NO.1/2014 OF
ADDITIONAL DISTRICT COURT & MOTOR ACCIDENT CLAIMS

TRIBUNAL, NORTH PARAVUR

APPELLANT/PETITIONER/PLAINTIFF:

C.C.JOHNNY, AGED 69 YEARS, S/O.C.T.CHERIAN,
PROPRIETOR, M/S.CEE CEE VIDEO MOVIES HAVING
OFFICE AT 109, 1ST FLOOR, CHITHRA AVENUE
SHOPPING INN, CHOOLAIMEDU HIGH ROAD,
CHENNAI - 600 096.

BY ADVS.
PHILIP T.VARGHESE
THOMAS T.VARGHESE
MOHAMMED SIYAD M.F.
ACHU SUBHA ABRAHAM
V.T.LITHA
K.R.MONISHA

RESPONDENTS/DEFENDANTS:

- 1 SHANTHI RAJAGOPAL, AGED 68 YEARS, W/O.LATE
K.RAJAGOPAL, NO.32, BHAGIRATHI AMMAL STREET,
T NAGAR, CHENNAI - 600 017.
- 2 M/S.PALS COMMUNICATIONS PRIVATE LTD.
A PRIVATE LIMITED COMPANY HAVING ITS OFFICE AT
KADAKKADAN BUILDING, DOWN HILL, MALAPPURAM,
REPRESENTED BY ITS CHAIRMAN C.H.NOUSHAD, AGED 40
YEARS, S/O.C.H.UMMAR, PIN-676519.

3 KISHORE, AGED 45 YEARS, AKASH VILLA,
KUNNUKARA P.O., ALUVA, ERNAKULAM.

BY ADVS.
ZAKEER HUSSAIN
K.A.SANJEETHA

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 13.10.2022, ALONG WITH FAO.NO.77/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT**[FAO Nos.77/2022 & 78/2022]****A.Muhamed Mustaque, J.**

These matters are arising from the proceedings in O.S.No.1/2014 and O.S.No.2/2013 on the file of the Additional District Court, North Paravoor.

2. The appellant was the 6th defendant in O.S.2/2013 and was the plaintiff in O.S.No.1/2014. Both matters are related to copyright. The appellant remained *ex parte* in O.S.No.2/2013. He filed an application to *set aside* the *ex parte* decree. That was dismissed stating that the petitioner had not taken steps against the respondents. Another I.A. was filed for restoration. That also was dismissed for the reason that there was a delay in filing the application. The delay was about 154 days. The suit filed by the appellant as O.S.No.1/2014 was

dismissed for default. He filed an application to restore the suit. That was dismissed for not taking steps. Thereupon, an application was filed to restore the application which was dismissed for not taking steps. There was delay of 154 days in filing the application. The court refused to condone the delay. In these two matters, this court is only called upon to decide the dismissal of the application to condone the delay. The appellant has explained the delay stating that he was a resident of Chennai and he faced financial problems and therefore, he could not come down to Cochin. We note there was no resistance to the application to condone the delay. It may be true that there were laches on the part of the appellant in filing the application within time. We are of the view that the application can be condoned on payment of costs of Rs.5,000/- (Rupees five thousand only) in each case. Accordingly, we

allow the application to condone the delay, restore the application to set aside the *ex parte* decree and the to restore the suit. Both applications shall be considered after hearing both parties. However, if the services are not complete, fresh steps shall be taken by the appellant in the court below. In F.A.O.No.77/2022, the costs shall be paid through the learned counsel appearing for the first respondent, within a period of four weeks and produce the acknowledgment before the court below. In F.A.O.No.78/2022, the costs shall be paid through the learned counsel appearing for the third respondent, within a period of four weeks and produce the acknowledgement before the court below.

3. The court below, on the production of the acknowledgement for payment of costs, shall proceed with the applications to *set aside* the *ex*

parte decree as well as the applications filed to restore the suits in O.S.No.1/2014 and O.S.No.2/2013. The parties are directed to appear before the court below on 17.11.2022. If the parties have not appeared, the court below shall ensure that steps shall be taken against the unserved persons before passing orders on those applications.

The F.A.Os. are disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

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