

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN  
&  
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

FAO.No. 32 of 2012 ()

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(AGAINST ORDER IN I.A.NOS.303/2011 AND 357/2011 IN O.S.NO.63  
OF 2009 OF THE COURT OF SUB JUDGE, CHENGANNUR)

APPELLANT(S)/PETITIONER/DEFENDANT

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K.K. SURENDRAN  
KRISHNAKRIPA, ANGADICKAL MURI, CHENGANNUR VILLAGE,  
CHENGANNUR TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.N.RADHAKRISHNAN (THIRUVALLA)

RESPONDENT(S)/CR.PETITIONER/PLAINTIFF:

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SHEELA RAMACHANDRAN  
AGED 40 YEARS, NARAYANA BHAVANATHIL, ANGADICKAL MURI  
CHENGANNUR VILLAGE, CHENGANNUR TALUK, PIN 689 121.

BY ADV. SRI.AJITH MURALI

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY  
HEARD ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &  
SUNIL THOMAS, JJ.

.....  
FAO No.32 of 2012  
.....

Dated this the 2<sup>nd</sup> day of July, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard.

2.This appeal is against an order by which the court below dismissed an application to set aside an ex parte decree and also to condone the delay in applying to set aside that ex parte decree.

3.The appellant pleaded that he came to know about the ex parte decree only when he was visited with personal execution and was arrested and was detained in civil prison. Records show that payments were made to the extent of ₹48,000/- for his release from the civil prison and, thereafter, on the basis of order of this Court on I.A.No.284 of 2012 in this appeal he deposited a further amount of ₹75,000/-.

4. The court below looked into the records and found that there was disparity between the signature on the cheque which is the basis of the suit claim and the signature on the summons form issued on the trial side. Obviously, the court below was of the view that summons was not duly served. However, the defendant was attributed with the knowledge of the decree because he appeared in execution following the distress action by way of warrant of arrest. The court below appears to have been under the view that having known about the decree, he should have immediately applied for having it set aside. We see that different steps were taken even during the execution and, ultimately, the application to set aside the ex parte decree was filed. On the whole, we also see that the time lag taken from the date of institution of the suit till the date of decree and the execution proceedings also ought to have persuaded the court below to grant the defendant a further opportunity, at least, on terms. This appeal is, therefore, entitled to succeed.

In the result, this appeal is allowed setting aside the impugned order and allowing I.A.Nos.357 and 303 of 2011 in O.S.No.63 of 2009 on the file of the Court of Sub Judge, Chengannur and, consequently, the ex parte decree, on condition that the appellant pays to the respondent an amount of ₹5,000/- (Rupees five thousand only) as costs by depositing it before the court below within a period of three weeks. Parties are directed to mark appearance before the court below on 08.08.2015.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)