

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYASHTA, 1937

FAO.No. 71 of 2012 ()

**(AGAINST THE ORDER DATED 19.12.2011 IN I.A.NO.2371/2011 IN O.S.NO.818/2010 ON
THE FILE OF THE PRINCIPAL SUBORDINATE JUDGE, KOLLAM)**

APPELLANT(S) :

- 1. VIGNESH.A, AGED 28 YEARS,
S/O.AYYAPPAN, (PROPRIETOR, VIGNESH COMMUNICATIONS,
NEAR BENZIGER HOSPITAL, THAMARAKULAM,
KOLLAM) PGR COMPOUND, THAMRAKULAM, KOLLAM.**
- 2. R.RAMESHKUMAR, AGED 47 YEARS,
S/O.RAMACHANDRA REDDIAR, ATHIRA, PGR COMPOUND,
THAMARAKULAM, KOLLAM**

**BY ADVS.SRI.M.T.SURESH KUMAR
SRI.RAJA VIJAYARAGHAVAN**

RESPONDENT(S) :

**STATE BANK OF TRAVANCORE,
SME, MAIN BRANCH, KOLLAM A BANKING CONCERN
INCORPORATED UNDER THE STATE BANK OF INDIA(SUSIDIARY
BANKS) ACT (ACT 38 OF 1959) HAVING ITS HEAD OFFICE AT
TRIVANDRUM AND HAVING BRANCHES AMONG OTHER PLACES AT
KOLLAM REP. BY SHRI V.SHAJAN, S/O.VELLUKUTTY, AGED 50 YEARS
MANAGER, STATE BANK OF TRAVANCORE, (SME), MAIN BRANCH,
BISHOP JEROME NAGAR, KOLLAM - 691 001.**

BY ADV.SRI.R.S.KALKURA

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AMV

THOTTATHIL B.RADHAKRISHNAN
&
SUNIL THOMAS, JJ.

.....
F.A.O.No.71 of 2012
.....

Dated this the 15th day of June, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

This appeal is against an order by which the court below refused to set aside an ex parte decree, after condoning the delay in institution of that application.

2.The matter arises from a suit for money filed by State Bank of India. The suit stood posted for appearance of defendants on 02.02.2011. The defendants did not appear and they were set ex parte. When the case was posted for payment of balance court fee, the defendants applied stating that they were unwell and could not appear before the court on 02.02.2011. Thereafter, the ex parte decree was passed and the application to set aside the ex parte decree was filed with application seeking condonation of delay. This essentially shows that from the date fixed for initial appearance, the defendants cannot be criticised for having been grossly negligent in prosecuting their defence. We see

that this is an eminently fit case where the ex parte decree ought to have been set aside, after condoning the delay at least on terms.

3. In the result, this appeal is allowed setting aside the impugned order and resultantly setting aside the ex parte decree in O.S. No.818 of 2010 of the Principal Sub Court, Kollam, on condition that the appellants will pay to the respondent an amount of Rs.5,000/- (Rupees five thousand only) as costs, within a period of three weeks from today. Receipt/memo for payment of costs will be presented before the court below. The parties are directed to mark appearance before the court below on 15.07.2015.

Appeal ordered accordingly.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

sd/-
(SUNIL THOMAS, JUDGE)

AMV/15/06/

/TRUE COPY/

P.A.TO JUDGE