

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

FAO.No. 134 of 2012 ()

AGAINST THE ORDER IN I.A.NO.604/11 IN OS 37/2010 of SUB COURT, TIRUR
DATED 20-01-2012

APPELLANTS/PETITIONERS/DEFENDANTS:

1. K.V. PRASAD
AGED 47 YEARS, S/O.KUMMILIVEETIL GOVINDAN
ARIYALLUR AMSOM, DESOM, TIRURANGADI TALUK
TIRUR.

2. K.V.PRADEEP
AGED 45 YEARS, S/O.KUMMILIVEETIL GOVINDAN
ARIYALLUR AMSOM, DESOM, TIRURANGADI TALUK
TIRUR.

3. K.V.PRAMEELA
AGED 43 YEARS, D/O.KUMMILIVEETIL GOVINDAN
ARIYALLUR AMSOM, DESOM, TIRURANGADI TALUK
TIRUR.

4. K.V.PRABITHA
AGED 41 YEARS, D/O.KUMMILIVEETIL GOVINDAN
ARIYALLUR AMSOM, DESOM, TIRURANGADI TALUK
TIRUR.

5. K.V.PRAMOD
AGED 35 YEARS, S/O.KUMMILIVEETIL GOVINDAN
ARIYALLUR AMSOM, DESOM, TIRURANGADI TALUK
TIRUR.

6. K.V.VASANTHA
AGED 77 YEARS, W/O.KUMMILIVEETIL GOVINDAN
ARIYALLUR AMSOM, DESOM, TIRURANGADI TALUK
TIRUR.

BY ADV. SMT.BIMALA BABY

RESPONDENT/RESPONDENT/PLAINTIFF:

SOUTH MALABAR GRAMIN BANK
ARIYALLUR BRANCH, TIRUR
REPRESENTED BY ITS BRANCHMANAGER.

R1 BY ADV. SRI.T.R.RAVI, SC, S.MALABAR G. BANK

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

ANNEXURE 1 : TRUE COPY OF the PLAINT IN OS NO.37/2010 ON the FILE OF the COURT OF THE SUB JUDGE OF TIRUR

ANNEXURE 2 : TRUE COPY OF THE I.A.4141/2010 IN OS.NO.37/2010 ON the FILE OF the COURT OF the SUB JUDGE OF TIRUR

ANNEXURE 3 : TRUE COPY OF the COUNTER STATEMENT DATED 31.01.2011 FILED BY the APPELLANTS

ANNEXURE 4 : TRUE COPY OF THE ORDER DATED 28.05.2011 IN I.A.NO.4141/2010 IN OS.27/2010 OF THE HONOURABLE SUB COURT, TIRUR

ANNEXURE 5 : CERTIFIED COPY OF THE ORDER DATED 20.01.2012 IN IA.NO.604/2011 IN O.S.NO.37/2010 OF the COURT OF THE SUBORDINATE JUDGE OR TIRUR

RESPONDENT'S EXHIBITS: NIL

True Copy /

P.A to Judge

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.134 of 2012

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Dated this the 7th day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Defendants in a suit for recovery of money instituted by a Gramin Bank are the appellants. They were set ex parte on different dates for non-appearance. When ex parte decree was passed immediately following the non-filing of the written statement, they applied to have the ex parte decree set aside within time. It appears to be a case of joint borrowal. That being so, the court below ought to have taken a lenient view and set aside the ex parte decree as a whole atleast on stringent conditions, particularly when there was no delay in applying to have the ex parte decree set aside. We are also satisfied that the application was supported by sufficient cause, that is to say, the defendants were attempting to have a settlement by negotiating with the plaintiff.

2. We also record the submission on behalf of the appellants that following order on I.A.No.659 of 2012, an amount of Rs.50,000/- has been deposited before the court below.

3. In the result, this appeal succeeds and the impugned order is set aside and resultantly, I.A.No.604 of 2011 in O.S.No.37 of 2010 seeking to set aside the ex parte decree in that suit is also allowed. Parties are directed to mark appearance before the court below on 17.09.2015. Trial court will expedite the final disposal of the suit and also would make an effort for A.D.R disposal through the mode of mediation, since we see an element of settlement in the litigation.

This appeal is ordered accordingly.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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