

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYASHTA, 1937

FAO.No. 147 of 2012 ()

APPELLANT(S)/PETITIONER/DEFENDANT:

**M.BABU,
'Y'SHAKH, PUNNATHALA P.O.KOLLAM,
REP.BY POWER OF ATTORNEY HOLDER SRI.MUHAMMED IKBAL KHAN,
ALAMKHAN COTTAGE, KRISHNAPURAM P.O., KAYAMKULAM**

BY ADV.SRI.K.R.AVINASH

RESPONDENT(S)/RESPONDENTS/PLAINTIFF:

- 1. THE STATE OF KERALA,
REP.BY DISTRICT COLLECTOR, KOLLAM-691 001.**
- 2. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, BUILDING DIVISION,
KOLLAM-691 001.**

R1,R2 BY SRI.RAMAPRASAD, GOVERNMENT PLEADER

**THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

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

C.M.Appl.No.367 of 2012
&
F.A.O.No.147 of 2012

Dated this the 29th day of May, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

C.M.Appl.No.367 of 2012

Perused affidavit. Heard. We are satisfied that sufficient cause has been shown to condone the delay. Hence, the delay is condoned.

F.A.O

1. This appeal is against two orders by which the court below has refused to set aside an ex parte decree in a suit filed by the State and has dismissed a counter claim raised in that suit as against the plaintiff's statement. The appellant is a contractor. He carried out certain works in relation to construction of buildings. The plea raised by the appellant before the court below was that when the case took for trial his counsel met with an accident and therefore, the case could not be prosecuted. The fact that the learned Advocate had met with an accident was not admittedly disputed before the court below seriously. However, the court below took the view that there is no material evidence to show that the lawyer

was involved in the accident. We think that the case requires an approach which would render justice between the State and the citizen, particularly when the plaint claim by the State as against the contractor was for an amount of ₹8,89,004/-. The counter claim is also to be restored to file. Under such circumstances, we are satisfied that this appeal is entitled to succeed.

2. In the result, the appeal is allowed and the orders on I.A.No.525 of 2011 and I.A.No.526 of 2011 in O.S.No.603 of 2007 are set aside. Resultantly, the ex parte decree passed in O.S.No.603 of 2007 of the Principal Sub Court, Kollam will stand set aside and the counter claim filed in that suit will stand restored.

Parties are directed to mark appearance before the court below on 7.7.2015, so that the matter can be listed for trial appropriately.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG