

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. 190 of 2012 ()

(AGAINST THE ORDER/JUDGMENT IN I.A.NO.7544/11 IN OS 398/2009 of III
ADDL.SUB COURT, KOZHIKODE)

APPELLANT(S)/PETITIONERS/DEFENDANTS:

1. M/S.MALABAR PLYWOOD WORKS,
CHERUVANNUR, FEROKE, KOZHIKODE,

2. N.P.KHALID,
S/O.VEERAN KOYA HAJI, CHERUVANNUR, FEROKE
KOZHIKODE.

3. NAJMA,
W/O.KHALID, CHERUVANNUR, FEROKE,
KOZHIKODE

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

PUNJAB NATIONAL BANK
BANK ROAD, KOZHIKODE, REP.BY ITS BRANCH MANAGER-673001

R1 BY ADV. SRI.C.AJITH KUMAR

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.**

F.A.O. No.190 of 2012

Dated this the 2nd day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Heard.

2. This appeal arises from a suit for recovery of an amount of Rs.4,87,254.57 with future interest. The defendants were set ex parte on 14/12/2011. The first defendant is a proprietary concern and the second defendant is its proprietor. The third defendant is the wife of the second defendant. The plea before the court below was that on the date on which the case stood posted for trial in the special list, the second defendant who has tendered evidence was suffering from jaundice. Ext.A1 medical certificate was produced. That is a certificate issued by an A class registered medical practitioner in Homeopathy. There was no delay in filing the application to set aside the ex parte decree. Nevertheless, the court below took the view that Ext.A1 medical certificate was by itself insufficient and treatment

papers ought to have been produced. Based on the materials on record, we are of the view that sufficient cause was shown for the non-appearance of the defendants and hence, grounds existed to set aside the ex-parte decree.

3. We have also looked into the written statement. The stand of the defendants is that there was discharge of the debt and there were other proceedings in the Consumer Forum as well. We are satisfied that the reasoning of the court below resulting in the dismissal of the application cannot be sustained. The application seeking to set aside the ex parte decree was liable to be allowed.

In the result, this appeal is allowed setting aside the impugned order and consequently I.A.No.7544 of 2011 in O.S.No.398 of 2009 on the file of the Sub Court, Kozhikode, is allowed thereby setting aside the ex parte decree passed in that suit. Parties are directed to mark appearance before the court below on 6/8/2015.

Sd/-

THOTTATHIL B.RADHAKRISHNAN

Judge

Sd/-

SUNIL THOMAS

Judge

dpk

/true copy/ PS to Judge

