

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 JYAISHTA, 1937

FAO.No. 219 of 2012 ()

**(AGAINST OR DATED 02.04.2012 IN I.A.NO.1718/2011 IN O.S.NO.181/2011 IN THE FILES
OF SUB COURT CHERTHALA)**

APPELLANT(S)/PETITIONER/DEFENDANT :

**DILEEP KUMAR, AGED 58 YEARS,
S/O.T.V.RAGHAVAN,
RESIDING AT DILEEP SADANAM (KOCHUTHOTTUNKAL)
KANICHUKULANGARA P.O, MARARIKULAM NORTH VILLAGE,
CHERTHALA.**

**BY ADVS.SRI.T.JAYAKRISHNAN
SRI.NIDHI BALACHANDRAN**

RESPONDENT(S)/RESPONDENT/PLAINTIFF :

**ANIL KUMAR
S/O.KRISHNAPPAN, SRI SRI SAILAM, C.M.C XXI
CHERTHALA, SOUTH MURI OF CHERTHALA SOUTH VILLAGE,
PIN 688 524.**

BY ADV. SRI.K.RAMANATHAN

**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. 219 of 2012
.....

Dated this the 15th day of June, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

Heard.

2.This appeal is against an order by which the court below dismissed an application to set aside an ex parte decree in a money suit. The application was supported by the affidavit of the applicant/defendant. His plea was that he received summons for appearance on 05.10.2011 and he could not appear since he was unwell. The suit was decreed ex parte on 18.10.2011 and he knew about it when he made enquiries on 11.11.2011, after he recovered.

3.We have gone through the impugned order. We think that the court below has adopted an approach, which cannot be countenanced in appeal. The fact that the defendant admitted that he received summons has apparently been put against him. It appears that the court below expected him to

immediately state his defence as to whether he admits the cheque, which is the basis of the suit claim. He had filed an affidavit stating that he was unwell and the time lag between the date fixed for appearance and the date of the ex parte decree is so minimal that ends of justice required that the ex parte decree ought to have been set aside paving way for an adjudication on merits. This appeal is entitled to succeed.

In the result, this appeal is allowed, setting aside the impugned order and also the ex parte decree in O.S.No.181 of 2011 of the Sub Court, Cherthala. Parties are directed to mark appearance before the court below on 20.07.2015.

sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

sd/-
(SUNIL THOMAS, JUDGE)