

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

FAO.No. 40 of 2015 ()

**(AGAINST THE ORDERS DATED 13.1.2015 PASSED IN I.A.NO.113/2014 AND
I.A.NO.114/2014 IN O.S.NO.271/2012 ON THE FILE OF THE SUB COURT, KATTAPPANA.)**

APPELLANT/PETITIONER/DEFENDANT:

**MRS.SUNITHA, AGED 47 YEARS,
W/O.M.M.JAMES, MYLADIYIL HOUSE, MUTTOM KARA,
MUTTOM VILLAGE, THODUPUZHA TALUK, IDUKKI DISTRICT.**

**BY ADVS.SRI.K.J.KURIACHAN
SRI.SUNIL JACOB**

RESPONDENT/RESPONDENT/PLAINTIFF:

**MR.SIBY, AGED 40 YEARS,
S/O.ABRAHAM, NALANICKAL HOUSE, PUTTADY KARA,
ANAKKARA VILLAGE, UDUMBANCHOLA TALUK,
IDUKKI DISTRICT-685 554.**

**R BY ADVS.SRI.A.C.DEVASIA
SRI.C.K.JACOB**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

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

F.A.O.No. 40 of 2015

Dated this the 30th day of June, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard the learned counsel for the parties.
2. This appeal is by the defendant in a suit for specific performance of a contract for sale. She challenges the order by which the court below dismissed an application to set aside the ex parte decree and also to condone the delay of 333 days in filing such application.
3. The material particulars show that the appellant had filed affidavits along with her applications to set aside ex parte decree and also for condonation of delay. She had tendered oral evidence before the court below as PW1 and was subjected to cross examination. Her case is that, she is the wife of an Advocate practicing in Thodupuzha and all her

affairs were being taken care of by him, however that, they fell apart as the husband has allegedly an extra marital affair. She says that she is a house wife and all papers in connection with her affairs, including any notice which would have come from the court, were in the custody of the husband. The suit is preferred by the plaintiff on the strength of an agreement shown to have been executed by the defendant and attested by the husband. The defendant alleges that the plaintiff is none other than the brother of the manager of the agricultural establishment of her husband. We may note that there is no contra evidence in that regard. There is no reason why the court below ought not to have believed the testimony of the defendant in support of the application to set aside the ex parte decree. We say this more importantly because, the total sale consideration is stated to be showed in the contract of sale is Rs.20,00,000/- (Rupees twenty lakhs only), out of which it is stated that Rs.19,00,000/- (Rupees nineteen lakhs only) was paid as advance.

4. The nature of the transaction and many other attendant factors ought to have persuaded the court below to give the defendant an opportunity, at least on terms. We are of the view that ends of justice will be satisfied, if the appellant is given an opportunity to contest the proceedings on payment of costs and by preserving the status quo now obtained as regards the execution.

In the result, this appeal is allowed, setting aside the impugned order and allowing I.A.Nos.113/2014 and 114/2014 in O.S.No.271/2012 on the file of the Sub Court, Kattappana and resultantly, setting aside the ex parte decree passed in that suit on condition that the appellant pays the respondent an amount of Rs.3,000/- (Rupees three thousand only) as costs payable to the respondent through his learned counsel appearing before this Court within a period of four weeks from the date of receipt of the certified copy of this judgment. The time limit fixed for payment of costs shall be treated as a last opportunity. The receipt/memo of payment of costs shall be

presented before the court below. It is further ordered that the court below will maintain the status quo of the execution proceedings and documentation in terms of the ex parte decree that is hereby set aside and the parties will stand governed appropriately in terms of the decree that may be passed after the trial. If costs as aforesaid is not paid, this appeal will stand dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)

The appellant has paid an amount of ₹3,000/- (Rupees three thousand only) as costs to the respondent through his counsel within time in compliance of the direction contained in the judgment dated 30/06/2015 in F.A.O 40/2015 vide letter No.D.1388/2015 dated 27/10/2015 of Sub Judge, Kattappana.

Sd/-
REGISTRAR (JUDICIAL)