

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

FAO.No. 66 of 2015 ()

(AGAINST ORDER DATED 14/1/2015 IN I.A. NO.1421/2014 IN OS NO.325/2012
OF SUB COURT, KARUNAGAPPALLY)

APPELLANT(S)/DEFENDANT:

SINI,
S/O.SANOJ, KOLABHAGATH VEETIL, KARUNAGAPPALLY,
KULASEKHARAPURAM.

BY ADV. SRI.M.R.SASITH

RESPONDENT(S)/PLAINTIFF:

T.N.OMANA,
SANTHOSH VIHAR, PRAYAR THEKKUM MURI,
CLAPPANA VILLAGE - 690 001.

R1 BY ADV. SRI.J.OM PRAKASH

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No. 66 OF 2015

Dated this the 21st day of May, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal arises from a suit filed in the year 2012. The defendant is the appellant. She challenges the order by which the court below refused to set aside the *ex parte* decree.

2. The suit stands decreed for an amount of Rs.17,50,000/-. The application to set aside the *ex parte* decree was filed within the time prescribed by law. The ground pleaded was that the defendant/petitioner was unwell. A medical certificate was also produced. The court below took a hyper technical approach by holding that even in the absence of the defendant's evidence, her counsel could have cross examined the plaintiff and then availed an adjournment. With that, the trial court says that benevolent approach could be adopted by imposing an amount of Rs.25,000/-, to be deposited towards costs, of which appropriation has to be

made for payment of commissioner's batta in the event of the commissioner being appointed at trial and the balance portion to be appropriated towards the decree debt in the event of decree being passed.

3. Bestowing our anxious consideration to the rival contentions and the fact situation of the case, we are of the view that while it may be justified to direct the appellant to deposit Rs.25,000/-, it would be rather premature to assume whether the commissioner should be deputed to examine the parties. It would also be too early in the day to conclude that the parties will not settle the litigation through mediation or otherwise.

Under the aforesaid circumstances, we modify the impugned order by directing that the *ex parte* decree will stand set aside if an amount of Rs.25,000/-(Rupees twenty five thousand only) is deposited before the court below within one month from today and such amount will be appropriated towards the decree debt in the event of a decree being ultimately passed in favour of the appellant for such or more amount. All other directions are vacated. It is further ordered that if deposit is

not made within the aforesaid period, this appeal will stand dismissed automatically.

4. Parties are directed to mark appearance before the court below on 18/6/2015.

The appeal is ordered accordingly.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

dpk

/True copy/

PS to Judge.

