

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

FAO.No. 86 of 2015 ()

(AGAINST THE COMMON ORDER PASSED IN I.A.NO.5352 OF 2013 AND
I.A.NO.5395/2013 IN OS NO.338 OF 2012 DATED 18/12/2014 ON THE FILE OF
THE ADDL. SUB JUDGE, IRINJALAKUDA)

APPELLANT(S)/PETITIONER/DEFENDANT:

SUKUMARAN, AGED 48 YEARS,
S/O.VELAYUDHAN, KAVULAPPARA HOUSE,
MURINGOOR THEKKUMURI VILLAGE, CHALAKUDY TALUK,
THRISSUR DISTRICT. PRESENTLY RESIDING AT
RAILWAY QUARTERS COLONY ,
NO.161/B, KALLAMKULANGARA DESAM, PALAKKAD.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.N.L.BITTO

RESPONDENT(S)/PLAINTIFFS AND DEFENDANTS:

JAYAPAL, AGED 51 YEARS,
S/O.KARUNAKARAN, "KARUNA" HOUSE, GREEN GARDEN ROAD
MARATHAKKARA VILLAGE, THRISSUR DISTRICT-680001.

R1 BY ADV. SRI.NIDHI BALACHANDRAN
R1 BY ADV. SRI.P.D.PAULY

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No.86 of 2015

Dated this the 6th day of July, 2015

JUDGMENT

Sunil Thomas, J.

The defendant in O.S.No.338/2012 of the Sub Court, Irinjalakuda, aggrieved by the common order in I.A.Nos.5352/2013 & 5395/2013 in O.S.No.338 of 2012 is the appellant herein.

2. In the above case, the plaintiff laid suit for specific performance of contract against the appellant/defendant herein. According to the appellant, he was employed at Palakkad and hence, entrusted the matter to a lawyer at Palakkad, who in turn, entrusted the matter to a lawyer at Irinjalakuda. It was later understood that the said lawyer did not prosecute the case properly and consequently the defendant was declared ex parte on 10/4/2013. The ex parte

decree was passed on 28/5/2013. According to the appellant, he came to know about the ex parte decree on 24/9/2013 and hence, filed I.A.No.5352/2013 to set aside the ex parte decree and I.A. No.5395/2013 to condone the delay of 203 days in filing the application to set aside the ex parte decree. Both the above applications were dismissed by the court below by the impugned common order.

3. The above order is under challenge in the present appeal.

4. Heard and examined the records.

5. According to the defendant/appellant, though he had received notice and engaged a lawyer, the counsel did not properly contest the matter. The court below, after evaluation of the available materials, held that the delay has not been properly explained and, hence, dismissed the applications. We are also satisfied that the evidence tendered by the appellant in this regard is not very convincing. However, it is seen that the defendant has considerable stake in the suit. The interest of justice demands that he may be given one more opportunity and the laches, which caused the delay on the part of the defendant,

can be compensated by imposing reasonable costs.

6. Hence, the appeal is liable to be allowed. The impugned order will stand set aside, I.A.Nos. 5395/2013 and 5352/2013 will be allowed and consequently ex parte judgment and decree set aside, on condition that the appellant herein pays a sum of Rs.3,000/-(Rupees Three Thousand only) to the learned counsel for the respondent/plaintiff before this Court within a period of four weeks from today. In case of refusal by the learned counsel for the respondent to receive costs, the appellant shall remit the amount before the court below. Any receipt/memo evidencing payment of money shall be produced before the court below. The parties shall appear before the court below on 16/8/2015. On satisfaction of the court below that the above condition has been complied with, the court shall record it and thereupon that the impugned order and the ex parte judgment and decree will stand set aside. Thereafter, the court below shall give an opportunity to the defendant to file a written statement and to contest the proceedings on merits.

7. In the event of non compliance of the above condition, the impugned common order shall stand confirmed without any

further orders.

The appeal is allowed accordingly.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

