

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

FAO.No. 134 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN I.A.NOS.1028/2014 & 1029/2014 IN
OS 26/2013 of SUB COURT, PERUMBAVOOR DATED 13-11-2014

APPELLANT(S)/PETITIONER/DEFENDANT:

PRADEEP GOEL
S/O. HARIS RAJ GOEL, FLAT NO. 104
SAI BALARAM APARTMENT, Y.V.RAO HOSPITAL ROAD
LAFFIPETI, VIJAYAWADA DISTRICT, ANDHRA PRADESH.

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS:

1. V.M.HASSAN
S/O. LATE M.A.MEERAN, VADAKKEKKUDY HOUSE,
VALLOM KARA
CHELAMATTOM VILLAGE, KUNNATHUNADU TALUK
ERNAKULAM DISTRICT, KERALA - 686 691.
2. RIJU HASSAN
S/O. V.M.HASSAN, VADAKKEKKUDY HOUSE,
VALLOM KARA
CHELAMATTOM VILLAGE, KUNNATHUNADU TALUK
ERNAKULAM DISTRICT, KERALA, PIN - 686 691.

R1&2 BY ADV. SRI.P.A.SALIM

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 24-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
FAO No.134 of 2015
and
C.M.Appl.No.330 of 2015
.....

Dated this the 24th day of July, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Adv.P.A.Salim appears for the respondents.
2. This FAO is against an order dismissing an application to set aside an ex parte decree in a suit filed for recovery of money. It stands with an application seeking condonation of delay of 135 days.
3. Before the court below the application to set aside the ex parte decree was filed with an application to condone the delay of 30 days in its institution.
4. Heard.

5. The court below took the view that the suit was initially decreed ex parte and that ex parte decree was set aside giving the defendant an opportunity to file written statement, however that no written statement was delivered within the reasonable time, and hence, the ex parte decree passed thereafter cannot be set aside by taking a lenient view.

6. We have looked into the copies of the plaint and the suit document. The crux of the allegations on the merits of the litigation is that the defendant had taken on lease two veneer (plywood) manufacturing units from the plaintiffs. The plea of the plaintiffs is that later on the units were surrendered and on reconciliation of accounts, monies were due towards rent. According to the plaintiffs, an amount of ₹12,50,000/- was outstanding as per the document, i.e. relied on by the plaintiffs. The plaintiffs were also shown to have been given first charge over an item of property belonging to the defendant, going by that communication.

7. Though the defendant is yet to deliver the written statement, it is submitted that the defendant impeaches the document produced by the plaintiffs. His basic contention would be that the said document is not legal evidence and is vitiated on different grounds, including fabrication.

8. On the whole, since the plaintiffs stand with the plea that they have a charge in their favour over an item of property belonging to the defendant and also taking into consideration the nature of the litigation, which is a lease and which deserves to be taken up by giving one more opportunity to the defendant to contest on merits, we are of the view that the defendant has to be given such opportunity, however on stringent conditions. The defendant has to treat this as the last opportunity as well.

In the result,

- (i) The C.M.Application is allowed by condoning the delay of 135 days in instituting this appeal.

- (ii) The FAO is allowed setting aside the impugned order and, consequentially, allowing I.A.Nos.1028 and 1029 of 2014 in O.S.No.26 of 2013 of Sub Court, Perumbavoor on condition that the appellant/defendant pays an amount of ₹25,000/- (Rupees twenty five thousand only) as costs to the respondents/plaintiffs through their learned counsel appearing in this appeal, within a period of six weeks from today. If such payment is not made, this appeal will stand dismissed automatically.
- (iii) Receipt/memo evidencing payment of costs shall be placed before the court below.
- (iv) Parties are directed to mark appearance before the court below on 07.09.2015.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

Certified that the appellant/defendant has paid an amount of ₹25,000/- (Rupees twenty five thousand only) as costs to the respondents/plaintiffs through their learned counsel before this court, within the time limit, in compliance of the direction contained in the judgment dated 24/07/2015 in F.A.O. 134/2015, vide report/letter dated 14/09/2015 of Sub Judge, Perumbavoor.

Sd/-
Registrar (Judicial)