

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. 1 of 2013 ()

**AGAINST THE ORDER IN I.A. NO.122 OF 2012 IN O.S. NO.263 OF 2009 ON THE FILE OF
THE SUBORDINATE JUDGE, KATTAPPANA**

APPELLANT(S)/PETITIONERS/DEFENDANTS 1 AND 2 :

- 1. V. CHAKKARAI,
S/O.VEERANNATHEVAR, 20/1 SWAMY VIVEKANANDA STREET
UTHAMAPURAM, CUMBUM P.O., CUMBUM VILLAGE.**
- 2. C.JAGATHEESAN
S/O.CHAKKARAI, S/O.VEERANNATHEVAR
20/1 SWAMY VIVEKANANDA STREET, UTHAMAPURAM
CUMBUM P.O., CUMBUM VILLAGE.**

BY ADV. SRI. RAJU K. MATHEWS

RESPONDENT(S)/RESPONDENT/PLAINTIFF :

**P.GANESAN
S/O.PERUMAL, MANIYAKARAR STREET, KOMBALAI P.O.
UTHAMAPALAYAM, THENI DISTRICT, TAMILNADU
PIN-625522.**

BY ADV. SRI. GEORGEKUTTY MATHEW

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

NS

THOTTATHIL B.RADHAKRISHNAN
&
SUNIL THOMAS, JJ.

.....
F.A.O.No. 1 of 2013
.....

Dated this the 15th day of June, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

Heard.

2.This appeal is against an order refusing to set aside an ex parte decree and an application seeking condonation of delay of 92 days in its institution.

3.We have heard the learned counsel for the parties. The suit was decreed ex parte on 31.10.2011. Looking at different materials on record, we see that an interim order was issued on I.A. No.8 of 2013 by this Court in this appeal granting stay of execution of the ex parte decree on condition that the appellant furnishes fixed deposit receipt in his name, before the court below for an amount of Rs.2,25,000/-.

4.On the whole, it cannot be ignored that the adjudication was taken place in the Sub Court, Kattappana and the plea was

that on the date fixed, the appellants could not reach the court since one of them was sick and the advocate could not be contacted in view of the local tensed situation attributable to Mullapperiyar issue.

5. Ends of justice require that the impugned order is set aside and the ex parte decree also is set aside, paving way for trial provided the appellants have furnished the fixed deposit receipts as ordered on I.A. No.8 of 2013, which order continues to govern the parties even now.

6. Under the aforesaid circumstances, this appeal is ordered directing that the impugned order will stand set aside and the ex parte decree in O.S.No.263 of 2009 will also stand set aside on condition that the appellants have furnished the fixed deposit receipt in terms of order on I.A.No.8 of 2013 and also pay an amount of Rs.3,000/- (Rupees three thousand only) as costs to the respondent payable to the counsel appearing for him before this Court, within a period of four weeks from the date of receipt of a copy of this judgment. Receipt of such payment shall be produced before the court below. The fixed deposit receipt shall be

marked with lien in favour of the court below and will be treated as security against any probable decree that may be passed. Parties are directed to mark appearance before the court below on 30.11.2015.

sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

sd/-
(SUNIL THOMAS, JUDGE)

AMV/17/06/

/TRUE COPY/

P.A.TO JUDGE