

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

FAO.No. 49 of 2013 ()

I.A.NO.145/2012 IN O.S.NO.14/2009 OF THE II ADDL. DISTRICT COURT,
ERNAKULAM DATED 29.05.2012

APPELLANT/ADDITIONAL 2ND DEFENDANT:

PAWAN KUMAR TOLASARIA AGED 46 YEARS
S/O. VASUDEV TOLASARIA, ANKITH BHAVAN CBI ROAD
KATHRIKADAVU, KALOOR.P.O.ERNAKULAM KOCHI-682017.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM

RESPONDENTS/RESPONDENTS-PLAINTIFFS:

1. REMANAN
S/O. VASUDEVAN, M/S. ICON HOME ENTERTAINMENT
SHOP NO. 72, 73, 2ND FLOOR DD CORNER STONE KADAVANTHRA
KOCHI-682020.

2. S. ANITHAKUMARI
W/O. REMANAN, SUN SHINE 1ST FLOOR, K.N.R.A. 319
THULAYIL LANE, PETTA.P.O., THIRUVANANTHAPURAM-695001.

R1 & 2 BY ADV. SRI.K.R.VINOD

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
12-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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C.M.Appl.No.137 of 2013 & F.A.O.No.49 of 2013

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Dated this the 12th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal against an order dismissing an application to set aside the ex parte decree stands with an application seeking condonation of delay of 114 days.

2. We have heard the learned counsel for the parties.

3. The suit is one for perpetual injunction based on a claim for copyright. The second defendant contested the suit after getting himself impleaded. The plea was that the suit was a collusive one as between the plaintiff and the first defendant. The second defendant was absent on the date when the case was listed for trial. He, therefore, was set ex parte and an ex parte decree was issued. He applied to have the ex parte decree set aside. He also filed an application for condonation of delay of 21 days in instituting that application. That was dismissed holding that there was no evidence to prove the reason for the absence. We think that the court below has erred in the matter of appreciating the materials and coming to legitimate conclusions which ought to have in such a situation, more

particularly because, the quality of the litigation is one which requires a re-opening of the ex parte decree to permit the contesting second defendant to object to the plaint claim. This could have been atleast on terms.

In the result, the application for condonation of delay and the appeal are allowed and the impugned order is set aside and as a consequence, I.A.No.145 of 2012 and I.A.No.146 of 2012 in O.S.No.14 of 2009 of the District Court, Ernakulam will stand allowed on condition that the appellant pays the respondents through the learned counsel appearing for them in this appeal an amount of Rs.2,000/- (Rupees two thousand only) as costs within a period of two weeks. Receipt/memo regarding payment of costs shall be presented before the court below. Parties are directed to mark appearance before the court below on July 28, 2015.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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