

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

FAO.No. 234 of 2013 ()

AGAINST THE ORDER IN I.A.432/2012 IN OS 61/2013 of SUB COURT,
KOTTARAKKARA DATED 25-06-2013

APPELLANT/PETITIONER/ DEFENDANT:

SURESH AGED 52
S/O SREEDHARAN, SREEGEETHAM, KULATHUPUZHA VILLAGE

BY ADV. SRI.AJAYA KUMAR. G

RESPONDENTS/RESPONDENTS/ PLAINTIFFS:

- 1. ALEXANDER, AGED 53 YEARS
S/O DANIEL, ITTIVILA VEEDU, CHOZHIYAKKODU
KULATHUPUZHA VILLAGE, PATHANAPURAM TALUK 691310

*ADDL R2. UNNIKRISHNAN.K,
S/O.KRISHNAKURUP, SHINIJA BHAVAN,
NELLIMOODU, KULATHUPUZHA
THINKALKARIKKOM VILLAGE REP. BY HIS POWER OF ATTORNEY HOLDER
MUHAMAD HASHIM,
S/O. MUHAMAD ISMAIL, AGED 41 YEARS, RESIDING AT
PLAVILA VEEDU, KULATHOOPUZHA P O, KULATHOOPUZHA
VILLAGE, KOLLAM DISTRICT

(* - ADDL. R2 IS IMPEADED VIDE ORDER DTD 23.01.2014 IN I.A.55/14)

R1 BY ADV. SRI.LIJU. M.P
RADDL.R2 BY ADV. SRI.ALEXANDER GEORGE

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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F.A.O.No.234 of 2013

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Dated this the 3rd day of July, 2015

JUDGMENT

Sunil Thomas, J.

This appeal is preferred by the defendant in O.S.No.61 of 2003 of the Sub Court, Kottarakkara, aggrieved by the dismissal of his application to condone the delay of 1181 days in filing the application to set aside the ex parte decree dated 13.11.2008.

2. The defendant had filed written statement in the above suit, denying the signature in the suit document based on which the claim was made. According to him, pending the above proceedings, one Vijayan who is the person alleged to have been involved in the transaction between the plaintiff and the defendant approached him and informed that the suit was proposed to be withdrawn. Copies of applications allegedly proposed to be filed in the suit was also shown to him. Believing it, he thereafter withdrew from contesting the proceedings. He came to know about the ex parte decree from the power of attorney of the defendant. Since he was not available in station and was in search of a job, he could not immediately file an application to set aside te ex parte decree. He thereafter filed

interlocutory application to set aside ex parte decree and an application to condone the delay in preferring that application.

3. This application was opposed by the plaintiff. The court below by the impugned orders held that the evidence tendered by PW1 to support the case pleaded in I.A.No.432 of 2012 was not believable and dismissed it. Consequently, I.A.No.434 of 2012 was also dismissed. This is under challenge in this appeal. Heard both sides and examined the records.

4. The suit is for recovery of a sum of Rs.3,36,000/- based on a promissory note. Defendant was set ex parte on 13.12.2008. It is true that the case set up by the defendant appears to be not very convincing. It is further true that delay has not been completely explained. However, it has to be noted that the defendant in fact, appeared and filed a written statement and took up the contention that the signature in the promissory note was forged. The amount involved is very substantial. To substantiate his case in the application to condone the delay, he got himself examined as PW1. Considering these facts, we feel that one more opportunity can be granted to the appellant/defendant to contest the proceedings on merits, subject of course on payment of costs.

In the result, the appeal and the IAs will stand allowed,

delay condoned and the ex parte judgment and decree will stand set aside on condition that the appellant pays an amount of Rs.5,000/- (Rupees five thousand only) as costs to the learned counsel appearing for the respondent herein, within a period of four weeks from today. Receipt/memo evidencing payment shall be produced before the court below. In case of refusal by the learned counsel for the respondent to receive the amount, it shall be deposited before the court below within the above time. Parties shall appear before the court below on 06.08.2015. On compliance of the condition as above, the judgment and decree of the court below will stand set aside and defendant will be permitted to contest the proceedings, and the court below shall proceed in accordance with law. In the event of the non-compliance of the above directions, the ex parte judgment and decree of the court below will stand confirmed without any further order.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

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