

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

F.A.O.No. 357 of 2013

*(Against the orders of the Sub Court in I.A.342/12 in O.S.No.1/2010 dated 11.7.13 and
19.8.2013 of the Subordinate Judges Court, Kattappana)*

APPELLANTS/PETITIONERS/DEFENDANT:

1. BIPIN MANI, S/O MANI
PALACKATHADATHIL HOUSE, UPPUTHARA P.O.
UPPUTHARA VILLAGE.
2. MANI, S/O PHILIP
PALACKATHADATHIL HOUSE, UPPUTHARA P.O.
UPPUTHARA VILLAGE.
3. LUCY MANI, W/O MANI PHILIP
PALACKATHADATHIL HOUSE, UPPUTHARA P.O.
UPPUTHARA VILLAGE.

BY ADV. SRI.TJ.MICHAEL

RESPONDENTS/PLAINTIFF:

THE FEDERAL BANK LTD.
UPPUTHARA BRANCH
REPRESENTED BY ITS BRANCH MANAGER UPPUTHARA P.O.
UPPUTHARA VILLAGE-685 505.

R1 BY ADV. SRI.A.ANTONY, SC for Bank
R1 BY ADV. SMT.LEELAMMA ANTONY

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.357 of 2013

Dated this the 7th day of October, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the petitioners in I.A.No.342 of 2012 in O.S.1/2010 on the file of the Sub Court, Kattappana.

2. The respondent bank filed the suit for recovery of amount. The suit was decreed ex parte. The I.A. was filed under order IX Rule 13 of C.P.C. praying to set aside the ex parte decree. By order dated 11th July, 2013, the I.A. was allowed with a condition requiring the appellants to deposit half of the decree amount. In this appeal, the appellants mainly challenge the condition imposed by the court below.

3. We heard the counsel for the appellants and also the learned counsel appearing for the respondent bank.

4. Reading of the order impugned itself show that the court below was satisfied that the appellants had made out sufficient grounds for setting aside the ex parte decree passed against them. Despite this, the

court has chosen to impose a condition requiring them to deposit 50% of the decreed amount as a condition.

5. Having heard the counsel for the parties, though we concede that as contended by the learned counsel for the bank relying on the judgment of the Apex Court in GMG Engineering Industries (M/s) and Others v. M/S Issa Greed Power Solution and Others [2015 KHC 4388] that it is open to the court to impose such conditions as it deems fit and proper, we are not inclined to agree with the learned counsel for the bank that such liberty available to the court entitles it to impose onerous conditions and thereby defeat the rights of the parties.

6. In this case, we are of the view that the condition imposing the judgment debtor to deposit 50% of the amount for setting aside the ex parte decree is an onerous one. Therefore, we set aside the order passed by the Sub Court, Kattappana in I.A.342 in O.S.1/2010 to the extent it requires the appellants to deposit 50% of the decree amount for setting aside the ex parte decree and direct that setting aside ex parte decree shall be subject to the condition that the

appellant shall pay cost of Rs.5,000/- to the respondent bank within three weeks from today.

7. Parties are directed to appear before the Sub Court, Kattappana on 3.11.2015.

Appeal is disposed of accordingly.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE

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