

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

FAO.No. 20 of 2014 ()

(AGAINST THE ORDER/JUDGMENT DATED 22/11/2015 IN I.A.NO.1256/2013 IN OS
248/2011 OF THE ADDITIONAL SUB COURT, NORTH PARAVUR)

APPELLANT(S)/DEFENDANTS:

1. SUBINDHU KAMALASANAN,
S/O. B. KAMALASANAN, PADMA, T.C. 13/1415,
16/2567, NEW BURMA ROAD, KUMARAPURAM
MEDICAL COLLEGE.P.O., THIRUVANANTHAPURAM-682031.

2. RAJINI SUBINDU,
W/O. SUBINDU KAMALASANAN, PADMA, T.C. 13/1415,
16/2567, NEW BURMA ROAD, KUMARAPURAM,
MEDICAL COLLEGE.P.O., THIRUVANANTHAPURAM-682031.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENT(S)/PLAINTIFF:

THE FEDERAL BANK LTD.
REG. OFFICE AT ALWAYE, KERALA
REPRESENTED BY FRANCIS P.K., S/O. P.M. KOCXHUTHOMAS,
ASSISTANT GENERAL MANAGER, MARINE DRIVE BRANCH,
ERNAKULAM-682031.

R1 BY ADV. SRI. REGI GEORGE
R1 BY ADV. SRI. GOPAKUMAR.G.
R1 BY ADV. SRI.BINOY DAVIS

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No. 20 of 2014

Dated this the 26th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is by the defendants. They challenge one among the two conditions imposed while condoning the delay in instituting the application under Order IX Rule 13 CPC.

2. By order minuted by this Court on 27/1/2014, it has been recorded that the impugned order is appealable and, therefore, the original petition under Article 227 would not lie and therefore, this appeal has to be entertained.

3. Having heard the learned counsel for the parties, we are satisfied that while condoning the delay in applying to set aside the ex parte decree, the imposition of costs of Rs.1,000/- was justified. However, the imposition of further condition of deposit of Rs.1,00,000/- towards the plaint claim was not justifiable.

In the result, the impugned order is modified vacating the direction to deposit Rs.1,00,000/- (Rupees one lakh). The appeal is ordered accordingly.

Sd/-

**THOTTATHIL B.RADHAKRISHNAN
Judge**

Sd/-

**SUNIL THOMAS
Judge**

dpk

/true copy/ PS to Judge.

