

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

FAO.No. 21 of 2014 ()

**AGAINST THE ORDER DATED 5.10.2013 IN I.A.NO.563/2012 IN O.S.NO.160/2007 OF THE
SUB COURT OF KOTTARAKKARA**

APPELLANT(S)/PETITIONER IN IA:

**SADASIVAN, S/O.DAMODHARAN,
RAHUL BHAVAN, KARAYALLOOR METH, ARYANKAVU VILLAGE.**

**BY ADVS.SRI.PRAVEEN K. JOY
SRI.TA.JOY**

RESPONDENT(S)/RESPONDENT IN I.A:

**A.JOSEPH,
MATTATHIL VEEDU, KARAYALLOORMETH, ARAYANKAVU VILLAGE.**

**R BY ADVS. SRI.P.HARIDAS
SMT.S.SIKKY**

**THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

**THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.**

F.A.O.No.21 of 2014

Dated this the 15th day of October, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This appeal is against an order dismissing an application to set aside an ex parte decree. We have heard the learned counsel for the appellant and the learned counsel for the respondent.

- 2.The ex parte decree for recovery of money based on a cheque shown to be for the value of ₹6,00,000/- was passed by the court below on 31.3.2008. On the plea that he came to know about the decree only on 10.3.2012, when he was informed about the notice of execution proceedings, the defendant moved to have the ex parte decree set aside. Court below found that the defendant had purchased stamp papers on 9.3.2012 to execute a power of attorney to conduct the case.

The application to set aside the ex parte decree was accordingly dismissed.

3. We have bestowed our anxious consideration to the materials on record. As already noted, the suit is based on a cheque shown to have been drawn for ₹6,00,000/-. That cheque is dated 3.10.2007. We think that the defendant can be given an opportunity to deliver his written statement and contest the suit, however, ensuring that the plaintiff's interest is adequately protected in so far as decree is concerned. We take this view, having regard to the fact that the defendant appears to have the defence that the cheque was handed over in relation to another transaction. The mentioning of the dates in the application to set aside the ex parte decree need not have been taken into consideration with such rigidity as has been done by the court below, having regard to the fact that the defendant was stated to be abroad and that the fact situation is one where an order of costs would satisfy the ends of justice for setting aside the ex parte decree, including on further

terms as to security.

In the result, this appeal is allowed, setting aside the impugned order on condition that the appellant pays the respondent an amount of Rs.8,000/- (Rupees eight thousand only) as costs payable through the counsel appearing for the respondent before this Court within a period of three weeks from today and furnishes security to the satisfaction of the court below for an amount of ₹15,00,000/- within a period of two months from today without fail. The quantum of security is fixed on a fair assessment based on the value of the cheque as shown in the proceedings now and the probable interest component that would accrue in terms of the statutory provisions of the Negotiable Instruments Act. Any property lying under attachment can also be offered as security, subject to the satisfaction of the court below. If any of the twin conditions imposed above is not complied with, the benefit of this judgment will stand deprived automatically and the appeal will stand dismissed. It is clarified that the time limit fixed for

performance of the conditions imposed as per this judgment shall be treated as peremptory. If the decree gets vacated by the court as shown above, court below will give priority for the suit for money which is filed in the year 2007 and consider any request for early disposal if made by the plaintiff.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG

The appellant has paid an amount of ₹ 8,000/- (Rupees eight thousand only) as costs to the respondent, through counsel appearing for the respondent before this court, within time in compliance of the direction contained in the judgment dated 15/10/2015 in F.A.O.No.21/2014, vide memo c.f.4654/2015 dated 27.10.2015.

Sd/-
REGISTRAR (JUDICIAL)