

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. 24 of 2014 ()

(AGAINST THE ORDER IN I.A. NO.1255/2012 IN O.S. NO.105 OF 2010 OF ADDL
SUB JUDGE, NORTH PARAVOOR)

APPELLANT(S)/PETITIONER/DEFENDANT :

SATHI, AGED 65 YEARS,
W/O. GOPI, KOCHUPARAMBIL HOUSE, KOTTUVALLY VILLAGE,
NORTH PARAVOOR TALUK, ERNAKULAM DISTRICT.

BY ADV. SMT.REKHA NAIR

RESPONDENT(S)/RESPONDENT/PLAINTIFF :

ANTO MATHEW, AGED 55 YEARS,
S/O. MATHEW, MARANATTU HOUSE
THANNEERMUKKOM NORTH VILLAGE, KANNAKARA P.O.
CHERTHALA.

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. 24 of 2014

Dated this the 26th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

The respondent served.

2. Heard.

3. This appeal is by the defendant. She challenges the order by which the court below initially allowed an application for condonation of delay in applying to set aside the ex parte decree by imposing a condition as to deposit of Rs.2,00,000/- towards the plaint claim over and above the costs of Rs.5,000/-. Consequently, on non-compliance of those conditions, the delay petition was dismissed and as a result, the application to set aside the ex parte decree was also dismissed.

4. Perusing the materials, we see that the impugned order does not disclose any reason whatsoever to impose the condition as noted above. We also see that the court below has passed the order condoning the delay without stating any reason, as well. Looking into the merits of the contentions and the plea put forward to set aside the ex parte decree and also attendant circumstances, we are

of the view that the application for condonation of delay ought to have been allowed and the ex parte decree ought to have been set aside on payment of costs of Rs.5,000/- without any condition as to deposit towards the plaint claim.

In the result, this appeal is allowed vacating the impugned order and as a consequence, the application seeking condonation of delay and the application to set aside the ex parte decree are allowed on condition that the appellant pays the respondent an amount of Rs.5,000/-(Rupees five thousand only) through the learned counsel appearing for him before the court below within a period of one month from today. If such amount is paid or deposited, the evidence of such payment or deposit shall be produced before the court below. If that is done, the ex parte decree passed in O.S. No.105/2010 of the Sub Court, North Paravur, will stand set aside. If such payment is not made, this appeal will stand dismissed. The parties are directed to mark appearance before the court below on 20th July, 2015.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

