

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

F.A.O.No. 54 of 2014

O.S. NO. 217/2007 OF PRINCIPAL SUB JUDGE,KOLLAM

APPELLANT(S)/DEFENDANT:

**P.S. BEENA, W/O. KRISHNA PILLAI,
KRISHNANJALI, PADANAYARKULANGARA,
THEKKUM MURI, KARUNAGAPPALLY VILLAGE,
KARUNAGAPPALLY TALUK, KOLLAM DIST.
(POWER OF ATTORNEY HOLDER OF DEFENDANT)**

BY ADV. SRI. B. KRISHNA MANI

RESPONDENT(S)/PLAINTIFF:

**P. SABU VARGHESE, PUTHEN VEETIL,
PADANAYARKULANGARA, THEKKUM MURI,
KARUNAGAPPALLY VILLAGE, KARUNAGAPPALLY TALUK
KOLLAM - 691 573.**

**BY ADVS. SRI. M.P. RAMNATH
SRI. P. RAJESH (KOTTAKKAL)
SMT. S. SANDHYA
SRI. SHALU VARGHESE
SRI. BEPIN PAUL**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 29-
06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

THOTTATHIL B.RADHAKRISHNAN

&

SUNIL THOMAS, JJ.

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F.A.O.54 of 2014

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Dated this the 29th day of June, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

Heard.

2. The defendant in a suit for money is the appellant. He is represented by his wife. An application to set aside the ex-parte decree was filed along with an application to condone the delay of 2122 days. The court below found that the application was so superfluous that it did not contain even the date on which the defendant is stated to have come to know about the ex-parte decree. Resultantly, the court below found no cause to condone the delay or to set aside the ex-parte decree. However, the court below took a lenient view and condoned the delay and ordered setting aside of the ex-parte decree on condition of payment of ₹25,000/- towards costs and also requiring security being furnished for the plaint claim.

3. Now, it appears that the time bound order for deposit of costs and furnishing security was not obeyed and as a consequence, on

30.09.2013, the interlocutory applications were dismissed. We may at once note that there is no appeal challenging the order dismissing the two interlocutory applications on 30.09.2013. However, this appeal is filed only on 07.11.2013, that too, without challenging the order dated 30.09.2013.

4. What is before us is only an appeal challenging the orders imposing the order of costs and also the conditions as to furnishing security. We have seen the copy of the objections filed by the plaintiff to the application to set aside the ex-parte decree. It contains a specific plea about another suit which the defendant herein (appellant) was contesting and ultimately, he had a power of attorney executed to enable his wife to prosecute the litigation which is not before us. We are told that the decree in the other suit which the defendant was contesting was ultimately put in execution and there was ratable distribution, including in favour of the plaintiff in the present case. These events which have occurred, with the passage of time, cannot be ignored by dealing with an appeal of this nature.

5. The trial court rightly said that the application on behalf of the defendant does not disclose any specific details regarding date or other particulars when the defendant's wife as a power of attorney holder stood to say that her husband had gone in search of a job

and he was not in station and that they came to know about the ex-parte decree only lately. There is no specific averment which would have enabled any adjudication whatsoever. Be that as it may, enormous delay cannot be explained except by saying that the defendant was attempting to confine to proper defence and prosecution of the other litigation which is ultimately stated to have resulted in execution.

6. On the whole, we see no ground to interfere with the order impugned. This appeal, therefore, fails.

In the result, this appeal is dismissed.

Sd/-

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

Sd/-

**SUNIL THOMAS
JUDGE**

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P.A. TO JUDGE