

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

FAO.No. 354 of 2011 ()

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AGAINST THE ORDER IN I.A.NO.1148/2009 AND R.P.I.A.NO.1149/2009 IN OS NO.70/2006
of SUB COURT, VADAKARA DATED 20-10-2011**

APPELLANT(S)/PETITIONER/DEFENDANT:

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K.POCKER,
S/O.KUNHABDULLA, AGED 43 YEARS,
RESIDING AT KALAMULLATHIL, PONMERI AMSOM,
PARAMBIL DESOM, VADAKARA TALUK.**

**BY ADVS.SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V**

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

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KIZHAKKEDATH P. ASHRAF,
S/O.ABDULLA, MEMUNDA AMSOM, KUTTOTH DESOM,
P.O.MEMUNDA, VADAKARA TALUK, KOZHIKODE DISTRICT.**

**R1 BY ADV. SRI.K.S.ARUN KUMAR
R1 BY ADV. SRI.E.V.LIJEESH**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

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

F.A.O.No.354 of 2011

Dated this the 30th day of June, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. This appeal is by the defendant in a suit for recovery of money.

The plaint claim is ₹6,60,000/-(Rupees six lakhs and sixty thousand only) with accruals by way of interest. An ex parte decree was passed. The appellant sought to have it set aside after condoning the delay of 685 days. That application stands dismissed. Hence, this appeal.

2. Heard the learned counsel for the parties.

3. The learned counsel for the appellant argued that the court below had to take a lenient attitude having regard to the enormous amount claimed in the plaint and that as sufficient cause has been shown, as the defendant was unwell with regard to rheumatic complaints, the ex parte decree ought to have been set aside.

4. Per contra, the learned counsel appearing for the respondent argued that the court below has dismissed the application holding that there is no ground made out to show that the defendant was not negligent to prosecute the defence in as much as no material was given to support the application seeking condonation of delay.
5. Having considered the contents of the order, the nature of the litigation and the reasons advanced as sufficient cause for condonation of delay and also the grounds urged to have the ex parte decree set aside, we think that a lenient view can be taken by allowing the appeal on terms.
6. We are satisfied that sufficient cause has been shown to set aside the ex parte decree after condoning the delay on sufficient terms as to costs.

In the result, this appeal is allowed, setting aside the impugned order and as a consequence, allowing I.A.No.1148 of 2009 and R.P.I.A.No.1149 of 2009 in O.S.No.70 of 2006 on the file of the Subordinate Judge of Vatakara and setting aside the

ex parte decree in that suit on condition that the appellant pays the respondent an amount of ₹3,000/-(Rupees three thousand only) as costs payable within a period of three weeks through his learned counsel appearing before this Court. Receipt/memo regarding payment of costs shall be presented before the court below. Parties are directed to mark appearance before the court below on 30.7.2015.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG