

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

FAO.No. 137 of 2014 ()

AGAINST THE ORDER DATED 9.11.2012 IN I.A.NOS.552, 553, 554, 555 & 556
OF 2011 IN A.S.NO.304 OF 2004 OF THE IIND ADDL. DISTRICT COURT,
ERNAKULAM

APPELLANT/APPELLANT IN I.A./DEFENDANT:

CENTRAL BANK OF INDIA,
A BODY CORPORATE HAVING ITS HEAD OFFICE AT CHANDRAMUKHI
NARIMAN POINT, MUMBAI-4000021 WITH BRANCH
AMONG OTHER PLACES AT WILLINGDON ISLAND
KOCHI-682003, REPRESENTED BY ITS CHIEF MANAGER.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.SANTHOSH KUMAR
SRI.S.NIKHIL SANKAR
SRI.ADARSH KUMAR

RESPONDENTS/RESPONDENTS IN I.A./PLAINTIFFS:

1. SURYA PRAKASH ALIAS PRAKASH C.MENON (DEAD) ,
S/O.A.C.RAGHAVA MENON DOING BUSINESS AT CHELUR AGENCIES
P.B.NO.511, UPPER BENDOOOR
MANGALOR-575 002. REPRESENTED BY ITS POWER
OF ATTORNEY HOLDER
A.C.RAGHAVA MENON, AGED 85 S/O.P.N.GOPALA MENON CELUR
VIDYANAGAR, ERNAKULAM.

2. KAIRALI S.PRAKASH, NO.2A,
WILLYS COTE APARTMENTS, UPPER BENDOOOR
MANGLOORE-575002, KARNATAKA STATE.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 03-07-2015,
ALONG WITH FAO. 232/2013, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

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F.A.O.Nos.137 of 2014 & 232 of 2013

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Dated this the 3rd day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Both the appeals are taken up.

2. These appeals are by a nationalized bank. It seeks to challenge an order by which the lower appellate court dismissed applications seeking impleadment of the legal representatives of the deceased respondent in a first appeal after setting aside abatement and condoning delay of 921 days, that is to say, around three years.

3. We have looked into the substance of the litigation as well. The bank had taken on lease the premises belonging to the plaintiffs. The suits were instituted for recovery of rent due at enhanced rate in terms of contract between the parties. Those suits were decreed. Bank filed appeals. Pending appeals, bank vacated the premises. The sole plaintiff, who was the first respondent before the court below, died. The court below dismissed the applications by holding that there is no cause whatsoever for the inordinate delay inasmuch as the deceased plaintiff is one whose details could have been easily collected from M/s.Chelur Agencies, Pallimukku,

Ernakulam which, going by the impugned order, is noted to be an establishment which could have easily provided the details of the legal representatives. We are satisfied that the court below was justified in dismissing the applications for condonation of delay for setting aside the abatement and for impleadment. We however also indicate that having regard to the totality of the facts and circumstances, there is no reason to hold that any particular officer of the bank was responsible for the delay to such nature as could be attributed as negligence or dereliction of duty. With that observation, these appeals are only to be dismissed.

In the result, these appeals are dismissed.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

Sbna