

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. 169 of 2014 ()

AGAINST THE ORDER IN I.A.NOS.2737/13 AND 2738 OF 2013 IN OS
405/2011 of ADDL.SUB COURT,KOTTAYAM DATED 15-01-2014

APPELLANTS/PETITIONERS/DEFENDANTS:

1. ANILKUMAR, AGED 40 YEARS
S/O.KUNJAPPAN, KUNNUMPURATH HOUSE, AYAMKUDY P.O.
MUTTUCHIRA VILLAGE, VAIKOM TALUK.

2. KUNJAMMA, AGED 62 YEARS
W/O.KUNJAPPAN, KUNNUMPURATH HOUSE, AYAMKUDY P.O.
MUTTUCHIRA VILLAGE, VAIKOM TALUK.

BY ADV. SRI.SHAJI THANKAPPAN

RESPONDENTS/COUNTER PETITIONER & LEGAL HEIRS OF PLAINTIFF:

1. SEBASTIAN M.J.,, AGED 52 YEARS
S/O.ULAHANNAN (DIED), NAVUKULANGARAYIL HOUSE
THALAYOLAPARAMBU P.O., THALAYOLAPARAMBU KARA
VADAYAR VILLAGE, VAIKOM TALUK, PIN - 686 605.

2. ANNIE SEBASTIAN,, AGED 50 YEARS
W/O.LATE SEBASTIAN M.J., NAVUKULANGARAYIL HOUSE
THALAYOLAPARAMBU P.O., THALAYOLAPARAMBU KARA
VADAYAR VILLAGE, VAIKOM TALUK, PIN - 686 605.

3. ANJANA GLORY SEBASTIAN,, AGED 21 YEARS
D/O.LATE SEBASTIAN M.J., NAVUKULANGARAYIL HOUSE
THALAYOLAPARAMBU P.O., THALAYOLAPARAMBU KARA
VADAYAR VILLAGE, VAIKOM TALUK, PIN - 686 605.

4. AMALA MARY SEBASTIAN,, AGED 19 YEARS
D/O.LATE SEBASTIAN M.J., NAVUKULANGARAYIL HOUSE
THALAYOLAPARAMBU P.O., THALAYOLAPARAMBU KARA
VADAYAR VILLAGE, VAIKOM TALUK, PIN - 686 605.

R2,R3,R4 BY ADV. SRI.K.K.VIJAYAKUMAR

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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F.A.O.No.169 of 2014

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Dated this the 30th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Defendants in a suit for recovery of money of Rs.3,02,000/- with interest are the appellants in this appeal. That suit was based on a cheque.

2. Defendants who are mother and son were set ex parte and an ex parte decree was passed. An application was filed seeking that the ex parte decree be set aside. Another application was also filed seeking condonation of delay of more than one year and seven months in filing the application to set aside the ex parte decree. In support of the application, it was stated that the mother who is the second defendant was undergoing a treatment for lung related problems and the first defendant, her son was virtually taking care of her and following her for the required treatment. The court below took a lenient view that the delay has not been satisfactorily explained.

3. We have looked into the fact that the suit is for a decree claiming Rs.3,02,000/- and interest. The criminal case for offence punishable under Section 138 of the Negotiable Instruments Act is stated to have ended up in an acquittal holding that there is no enforceable debt, it is pointed out on behalf of the appellant. We also see that the nature of the allegations and the relationship between the defendants ought to have been considered, which was sufficient enough to persuade the applications been allowed at least on terms. Hence, we satisfy that this appeal can be allowed and the ex parte decree can be set aside, however on terms.

4. In the result, this appeal is allowed setting aside the impugned order and consequently, allowing I.A.Nos.2737 and 2738 of 2013 and setting aside the ex parte decree in O.S.No.405 of 2011 of the Sub Court, Kottayam on condition that the appellants pay the respondents an amount of Rs.2,000/- (Rupees two thousand only) as costs payable to the learned counsel appearing for the respondents before this Court within a period of three weeks from the date of receipt of a copy of this judgment. Memo/receipt for payment of costs in terms of this order can be

placed before the court below. Parties are directed to mark appearance before the court below on 15.10. 2015.

This appeal is ordered accordingly.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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