

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. 172 of 2014 ()

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AGAINST THE ORDER IN I.A.NO.259/12 & I.A.NO.260/12 IN OS 182/2006 of PRINCIPAL
SUB COURT,ATTINGAL DATED 30-11-2013**

APPELLANT(S)/PETITIONER/DEFENDANT:

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RAVISANKAR @ HARISHANKAR AGED 40 YEARS,
S/O.SANKARA PILLAI, SREENIKETHAN, NEDUMPARA,
THATTATHUMALA, PAZHAYAKKUNNUMMEL VILLAGE,
CHIRAYINKIL TALUK, THIRUVANANTHAPURAM DISTRICT**

BY ADV. SRI.THYPARAMBIL THOMAS THOMAS

RESPONDENT(S)/COUNTER PETITIONERS/PLAINTIFF:

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- 1. HARSHA,
S/O.SAHEERSHA, SHA MANDIRAM,
PALLIKKAL DESOM AND VILLAGE,
THIRUVANANTHAPURAM 695 604.**
 - 2. REEJA,
D/O.KULUSAM BEEVI, SHA MANDIRAM,
PALLIKKAL DESOM AND VILLAGE,
THIRUVANANTHAPURAM 695 604.**
 - 3. HARSHA,
S/O.SAHEERSHA, SHA MANDIRAM,
PALLIKKAL DESOM AND VILLAGE,
THIRUVANANTHAPURAM 695 604.**
 - 4. ASIMSHA, AGED 14 YEARS
S/O.SAHEERSHA, (MINOR), SHA MANDIRAM,
PALLIKKAL DESOM AND VILLAGE,
THIRUVANANTHAPURAM 695 604.**
 - 5. SAINABA BEEVI,
W/O.ABDUL SALAM, SHA MANDIRAM,
PALLIKKAL DESOM AND VILLAGE,
THIRUVANANTHAPURAM 695 604.**

R1,R2 & 5 BY ADV. SRI.M.DINESH

**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.172 of 2014

Dated this the 30th day of June, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.The defendant in a suit for recovery of money based on a cheque is the appellant. He challenges the order by which the court below has refused to condone the delay of 54 months in applying to set aside the ex parte decree and also to have that ex parte decree set aside.
- 2.Heard.
- 3.The appellant is abroad. According to him, he had engaged Adv.Harikumar of Kollam to contest the suit in Attingal Sub Court. It is stated that when the appellant came back from Gulf to his home and ultimately enquired, it was seen that, that advocate had also left the profession and an ex parte decree was passed against the defendant.

4. We see that the defense set up by the defendant is that he had attempted to provide some financial support by way of security to one Krishnankumar of Kollam who had failed in business venture and that the said Krishnakumar's wife committed suicide and the said Krishnakumar is stated to be absconding. The defendant tries to put up a case that the cheque which was provided for the benefit of the said Krishnakumar had been clandestinely brought and used by the plaintiff to institute the present litigation. We note this only to indicate that this is a case where the defendant can be given an opportunity for trial of his defense contentions as well, however, on terms.

5. Having bestowed our anxious consideration to the grounds on which the delay was sought to be condoned and the ex parte decree set aside, we think that ends of justice will be satisfied if the ex parte decree is set aside on condition that the defendant/appellant furnishes security to the satisfaction of the court below for the decree debt as on the date of decree within a period of three months from today. It is so ordered. If such security is furnished, as may be accepted by the court

below, the ex parte decree will stand set aside and the court below will try the suit de novo after affording sufficient opportunity to all sides. Unless the ex parte decree gets set aside in terms of this judgment, the suit shall not, obviously, be proceeded for trial. Any property lying under attachment can also be offered as security subject to the satisfaction of the court below. Appellant shall take this as a last opportunity to have the ex parte decree set aside. The execution proceedings shall also stand deferred for a period of three months and thereafter, the appeal will stand regulated by the effect of whatever comes following this judgment.

Parties are directed to mark appearance before the court below on 4.9.2015.

Appeal ordered accordingly.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE