

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

FAO.No. 193 of 2014 ()  
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I.A.NO.2820/13 IN O.S.NO.1/08 OF the SUB COURT, TIRUR DATED  
21.02.14

APPELLANT/PETITIONER/DEFENDANT :  
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ABDUL SALAM HAJI  
S/O. NALAKATH ABDUL ASEEZ, THIRURANGADI AMSOM  
ARIYALLOOR DESOM, TIRUR TALUK  
REPRESENTED BY POWER OF ATTORNEY HOLDER FAHAD ABDUL ASEEZ.

BY ADVS.SRI.K.M.FIROZ  
SMT.M.SHAJNA  
SRI.S.KANNAN  
SMT.NEENU.P.KUMAR

RESPONDENT/RESPONDENT/PLAINTIFF :  
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K.S.ABDUL VAHID  
S/O. ABDUL REHIMANKUTTY  
KODAMBIYAKAM @ SYDAMAKKANAKATH HOUSE, PONNANI AMSOM  
DESOM, PONNANI TALUK, PIN-686 590.

R1 BY ADV. SRI.A.JAYASANKAR  
R1 BY ADV. SRI.C.V.MANUVILSAN  
R1 BY ADV. SRI.MANU GOVIND

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON  
19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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**F.A.O.No.193 of 2014**

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Dated this the 19<sup>th</sup> day of June, 2015

**JUDGMENT**

**Thottathil B. Radhakrishnan, J.**

Heard learned counsel for the appellant and the respondent.

2. This appeal is against an order dismissing the application to set aside the ex parte decree. There was no delay in filing that application.

3. The suit from which this appeal arises is one for specific performance of a contract for sale. An ex parte decree was passed on the ground that the defendant had not appeared when the case was listed for trial. Appellant had produced medical report of the doctor to show that there was sufficient cause for not appearing on the day to which the case stood posted. As already noted, there was no delay in filing the application to set aside the ex parte decree. We also see that there was no contra material to persuade the court below not to accept medical report. Under such circumstances, this appeal is entitled to succeed, more particularly, since the matter relates to a suit for specific performance of contract for sale.

In the result, this appeal is allowed and resultantly, the impugned order and the ex parte decree in O.S.No.1 of 2008 will stand set aside, however, on condition that the defendant/appellant pays an amount of Rs.5,000/- (Rupees five thousand only) to the plaintiff/respondent through learned counsel appearing for him before this Court within a period of three weeks. If the amount is not paid, this appeal will stand dismissed. The memo/receipt of such payment will be placed before the court below. Parties are directed to mark appearance before the court below on August 4<sup>th</sup>, 2015.

Sd/-

**THOTTATHIL B. RADHAKRISHNAN**  
**Judge**

Sd/-

**SUNIL THOMAS**  
**Judge**

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