

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

F.A.O.No. 210 of 2014

O.S. 540/2013 OF SUB JUDGE, CHAVAKKAD

APPELLANT(S)/APPELLANT:

**M/S. SHAH ADVERTISERS,
(NEAR) GOVT.HIGHER SECONDARY SCHOOL, N.H.17,
THALIKKULAM, CHAVAKKAD,
REP BY PROPRIETOR NOORUDHEEN SHA,
S/O.KUNJUMON, ABMBALATHU VEETIL, THALIKULAM P O
POWER OF ATTORNEY HOLDER: SAKEER, AGED 35 YEARS,
S/O. ARAVASSERY VEETIL AVARUMON, VADANAPPLILLY VILLAGE/
DESOM, CHAVAKKAD TALUK.**

**BY ADVS.SRI. SANTHOSH P. PODUVAL
SMT. R. RAJITHA
SRI. K.D. SREEVISAKH**

RESPONDENT(S)/RESPONDENTS:

**M/S. BHEEMA & BROTHERS,
REP BY MANAGING PARTNER, MANJUNAD, S/O.LAKSHMIKANDAN,
SREENIVAS MULLAKKAL, ALAPPUZHA
AUTHORIZED AGENT: ARUN RAVU M G, AGED 27 YEARS,
S/O. GOVINDA RAVU, MADIMUKAL VEEDU, AYYANTHOLE P O
THRISSUR DIST**

**BY ADVS. SRI. S. VINOD BHAT
SRI. LEGITH T.KOTTAKKAL**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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

F.A.O.No.210 of 2014

Dated this the 29th day of June, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

The defendant in a suit for damages is the appellant.

2. Heard.

3. An *ex parte* decree was passed for non-appearance of the defendant. In the suit for damages, the defendant applied to have the *ex parte* decree set aside, because it wanted an opportunity of being heard. The court below, however, by a single line order, allowed the application imposing condition of deposit of 25% of the decree amount as a pre-condition to set aside the *ex parte* decree. The court below had not expressed any reason as to why it is setting aside the *ex parte* decree. Nor did it say as to why it has imposed a particular condition while setting aside the *ex parte* decree. It could be modestly said that the order is a critic one.

4. When deposit was not made in terms of the aforesaid order, the application to set aside the *ex parte* decree was dismissed, again by a non-speaking order.

5. Judicial decisions ought to express the reasons for their making. There cannot be a straight jacket formula in considering applications to set aside the *ex parte* decree. There cannot also be a set formula for imposition of costs or conditions. We are unable to countenance the impugned order. Under such circumstances, we are satisfied that the application to set aside the *ex parte* decree ought to have been allowed without imposing any terms.

In the result, this appeal is allowed setting aside the impugned order and allowing I.A.No.564/2014 in O.S.No.540/2013 of the Court of Sub Judge, Chavakkad and thereby setting aside the *ex parte* decree passed in the case. Parties are directed to mark appearance before that court on 28th November, 2015. The court below will consider expeditious disposal of the suit.

Sd/-

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

Sd/-

**SUNIL THOMAS
JUDGE**

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P.A. TO JUDGE