

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

FAO.No. 225 of 2014 ()

APPELLANT(S)/RESPONDENT/DEFENDANT :

**SUBHASH, AGED 58 YEARS
OFFICIALLY KNOWN AS T.K.SUBHASH KUMARI)
S/O. THERUPARAMBIL KUTTAN, MANGAD VILLAGE
THALAPILLY TALUK, THRISSUR.**

**BY ADVS.SRI.SHAJI P.CHALY
SMT.C.S.SINDHU KRISHNAH**

RESPONDENT(S)/APPELLANT/PLAINTIFF :

**SIDDIQUE
S/O. KUNNATHUVALAPPIL MUHAMMED,
KATTAKAMBAL VILLAGE
THALAPPILLY TALUK, THRISSUR-680 544.**

**R1 BY ADV. SRI.P.RADHAKRISHNAN (1)
ADV. SRI.MADHU RADHAKRISHNAN**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

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

F.A.O.No.225 of 2014

Dated this the 1st day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order by which the court below refused to set aside the *ex parte* decree.

2. The suit was initially pending before the Sub Court, Thrissur. At one stage, the defendant was set *ex parte* and an *ex parte* order was passed then. That was set aside by this Court through FAO.No.192/2013 on terms. Thereafter, the suit was transferred to the Sub Court, Chavakkad, on constitution of that new court and it was re-numbered as a suit of 2013. Though, in Thrissur, the suit was instituted in 2009, after the transfer of the case to the Chavakkad Court, the plaintiff was absent and an Interlocutory Application was dismissed for default. The defendant was not present on 11.10.2013, when the case was listed for trial. Consequently, the suit was decreed as *ex parte*. The application for setting aside the *ex parte* decree was filed pleading that the mother

of the defendant, who was representing him, fell ill and therefore, the defendant could not appear.

3. We have seen the claim, the quality of the claim and defence. We think that after transfer of the suit to the Chavakkad Court, the appellant had not prosecuted the defence appropriately. The court below has set aside the *ex parte* decree, however on terms. The appeal is against the terms imposed. The court below has imposed condition of deposit of 15% of the decree debt of which, 10% is to be converted as fixed deposit. We think that ends of justice would be satisfied, if the said condition is vacated and the plaintiff is paid an amount of Rs.10,000/- (Rupees ten thousand only) as costs.

In the result, this appeal is allowed and the condition imposed by the court below as per the impugned order is modified to be the payment of costs of Rs.10,000/- (Rupees ten thousand only) to the plaintiff, within a period of three weeks from the date of receipt of a copy of this judgment. Such payment can be made either to the counsel appearing for the respondent before this Court or to the counsel

appearing for the plaintiff before the court below.
Receipt/memo regarding the payment of costs can be
presented before the court below. Parties are directed to
mark appearance before the court below on 05.10.2015.

**THOTTATHIL B. RADHAKRISHNAN
JUDGE**

**SUNIL THOMAS
JUDGE**

VS