

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

FAO.No. 317 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN I.A.NO.1167 OF 2013 IN OS 6/2010
OF SUB COURT, SULTHAN BATHERY DATED 24-06-2014

APPELLANT(S)/PETITIONER/DEFENDANT:

KUTTIKRISHNAN NAMBIAR, AGED 58 YEARS,
S/O.MADHAVAN NAIR, MADHAVAM VEEDU, VEMOM P.O
PAYYAMBALLY AMSOM, VEMOM DESAM
MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADVS.SRI.V.V.SIDHARTHAN (SR.)
SRI.D.G.VIPIN
SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

GIREESHKUMAR, AGED 46 YEARS
S/O.NARAYANAN, MATHAPPALLIL VEEDU, KOLERI,
PURAKKADI AMSOM, SULTHANBATHERY TALUK
WAYANAD DISTRICT.

BY ADV. SRI.C.M.NAZAR
BY ADV. SRI.MANSOOR.B.H.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY
HEARD ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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FAO No.317 of 2014
.....

Dated this the 24rd day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Defendant in a suit instituted in 2010 for recovery of ₹6,50,000/- with interest, is the appellant.
2. We have heard the learned counsel for the appellant and the learned counsel for the respondent.
3. When the suit was listed for trial, the appellant/defendant did not appear. His counsel reported no instructions. Thereupon, an ex parte decree was passed. The appellant filed application to set aside the ex parte decree. Though that application was filed within time, the plea projected was that the appellant was suffering from jaundice and, for quite some time, he could not meet his counsel. It is thus that he tried to explain his lack of contact with the counsel.

4. The court below had before it only the petitioner's affidavit and the counter filed by the plaintiff. There is no oral evidence offered. No medical certificate was produced. In its wisdom, the trial court took the view that the application to set aside the ex parte decree cannot be allowed.
5. In this appeal, the learned counsel for the appellant pointed out that the plaint claim itself is time barred and that the plaint transaction cannot stand, having regard to the fact that the documents which are produced along with the plaint are obtained under duress and coercion.
6. We have looked into the plaint and the written statement. The written statement was filed about five months after summons was served on the defendant. The written statement mentions about the criminal case on the file of the Judicial Magistrate of First Class, however without disclosing its identity. On the basis of the

submissions and the materials shown to us, we see that there was some complaint in 2007 as one made by the defendant and the Police had, ultimately, referred that case as groundless.

7. Having regard to the nature of the litigation and the fact that the appellant did not have any material to show that he was actually sick as contended by him, we are of the view that the only way of taking a lenient view in the matter is to grant a further opportunity to the defendant to contest the suit, however on condition that he furnishes security to the satisfaction of the court below for the plaint claim. Five years have gone through after the institution of the suit. We think that security for an amount of ₹7,00,000/- (Rupees seven lakhs only) would be just and reasonable in the circumstances, particularly when we are not imposing any order of costs on the defendant to have the ex parte decree set aside.

In the result, this appeal is allowed setting aside the impugned

order, and consequently, the ex parte decree on condition that the appellant furnishes security to the satisfaction of the court below for an amount of ₹7,00,000/- (Rupees seven lakhs only) within a period of three months. If this condition is not satisfied, this appeal will stand dismissed automatically and the ex parte decree will stand. Parties are directed to mark appearance before the court below on 18.08.2015.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)

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