

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

FAO.No. 322 of 2014 ()

(AGAINST THE ORDER IN I.A.NOS.1001/2012 & 1002/2012 IN LAR 112/2000 of
SUB COURT, MANJERI DATED 04-1-2013)
APPELLANT(S)/PETITIONER/CLAIMANT:

ALUNGAL AYISHUMMA,
D/O. KUTTIYAMU, CALICUT AIRPORT, KONDOTTY AMSOM,
DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SRI.K.RAKESH

RESPONDENT(S)/RESPONDENT:

1. THE DISTRICT COLLECTOR,
MALAPPURAM-676505.

2. THE AIRPORT DIRECTOR,
AIRPORT AUTHORITY OF INDIA, CALICUT AIRPORT.P.O.
KARIPPOOR, ERNAD TALUK, MALAPPURAM DISTRICT-673647.

R2 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

R2 BY ADV. SRI.S.SUJIN

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No. 322 of 2014

Dated this the 6th day of July, 2015

JUDGMENT

Sunil Thomas, J.

This appeal is preferred by the claimant in L.A.R.No.112/2000 of the Sub court Manjeri aggrieved by the dismissal of I.A.Nos.1001/2012 and 1002/2012.

2. The above land acquisition proceeding was listed for evidence on 19/7/2004. On that day, the learned counsel for the claimant reported no instructions. Thereafter, the court below proceeded to pass the judgment in the above case. Subsequently, the claimant filed I.A.Nos.1001/2012 & 1002/2012 to set aside the ex parte judgment and decree and also to condone the delay of 2825 days in preferring the application to set aside the ex parte decree. It was stated that the land acquisition proceedings were looked after by the

brother of the claimant who was aged and laid up. Since he could not properly instruct the lawyer on the date of trial, the learned counsel reported no instructions. The court below, on an evaluation of the pleadings and the available materials, concluded that the appellant had not succeeded in showing sufficient cause for condoning the delay of 2825 days and consequently dismissed I.A.Nos.1002/2012 & 1001/2012 by a common order. That order is assailed in this appeal.

2. Heard both sides and examined the records.

3. Admittedly the claimant did not appear on the date of the trial nor adduced any evidence. The court below has also in the judgment recorded that the plaintiff was absent, set ex parte and that no evidence was let in. There is a brief narration of facts in the judgment and held the claim of the claimant was rejected. Considering the fact that the claimant did not adduce any evidence, the judgment and decree can be treated only as an ex parte one. Though in form, it may appear to be a judgment and decree, on merit, in reality and content, it remains as an ex parte decree.

4. The cause shown by the appellant for her absence is

that the case was being looked after by her brother who was aged and infirm. In the appeal memorandum, she has set up a case that her brother was laid up and the original claimant died on 27/7/2007, after long episode of treatment. The available materials indicate that the claimant is 72 years old and there is nothing to show that she was actuated by any mala fides or laches to protract the proceedings. She has affixed her thump impression in the affidavit supporting the appeal memorandum indicating that she is uneducated. There is nothing to show that she has got any other family member to support. In the above circumstances, it appears that a lenient view is liable to be taken, though the delay is of considerable period, however subject to condition.

5. In the result, the appeal is liable to be allowed. The impugned common order is set aside and I.A. Nos.1001/2012 and 1002/2012 will stand allowed and the judgment and decree of the court below set aside. Both sides shall appear before the court below on 17/8/2015. The court below shall give a reasonable opportunity to both sides to contest the case on merits. The court below shall proceed to pass appropriate

orders thereupon. It is clarified that in the event of court granting enhanced compensation to her, she will not be entitled for the interest from the date of judgment and decree now set aside and the filing of both IAs from which the impugned order arose.

The appeal is allowed accordingly.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

