

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

FAO.No. 351 of 2014 ()

(AGAINST THE ORDER/JUDGMENT IN I.A.NOS.107/2014 & 108/2014 IN
OS NO.162/2012 DATED 25.06.2014 AND IN I.A.NO.107/2014 IN
O.S.NO.162/2012 DATED 27.08.2014 OF ADDL. SUB COURT, NORTH
PARAVUR)

APPELLANT(S) : /PETITIONERS/DEFENDANTS

1. JOAN JOSEPH, D/O.P.T.JOSEPH, AGED 26 YEARS,
PUTHUKULANGARA HOUSE, POOZHICKOL P.O.,
KADATHURUTHI VILLAGE, KOTTAYAM TALUK.
2. P.T.JOSEPH, S/O.THOMAS, AGED 55 YEARS,
PUTHUKULANGARA HOUSE, POOZHICKOL P.O.,
KADATHURUTHI VILLAGE, KOTTAYAM TALUK.
3. BINOY JOSEPH, S/O.JOSEPH, AGED 45 YEARS,
VALIYAMURATHANATAL HOUSE, ULLANAD P.O.,
BHARANAGANAM VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT.

BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA

RESPONDENT(S) : /RESPONDENT/PLAINTIFF

M/S.PUNJAB NATIONAL BANK, ANGAMALY BRANCH,
REP. BY ITS SENIOR MANAGER AND POWER OF ATTORNEY
HOLDER SRI.JOSE ITTEERA PAREKKATTIL HOUSE,
KIDANGOOR KARA, THURAVOOR VILLAGE.

BY ADV. SRI.SANTHEEP ANKARATH, SC,
PUNJAB NATIONAL BANK

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ORDERS ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
FAO No.351 of 2014
.....

Dated this the 3rd day of July, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.We have heard the learned counsel for the appellants and the learned counsel for the respondent.
- 2.Respondent is a Nationalised Bank. Appellants availed a loan for the purpose of education of the first appellant, who is the daughter of the other appellants, to undergo B.Sc Nursing course. The defendants filed written statement. Since they did not appear on the date on which the case stood posted in the special list for trial, they were set ex parte and an ex parte decree was passed.
- 3.An application was filed seeking that the ex parte decree be set aside. Another application was filed seeking condonation of delay of 55 days in applying to set aside the ex parte decree. The reason stated was that the clerk attached to the counsel

appearing for the defendants committed an error in noting the posting date of the case. The court below, in our considered view, took a hypothetical approach of stating that there was no evidence as to that effect and allowed the applications on condition that the defendants should deposit 25% of the plaint claim and also to pay ₹2,500/- as costs. For non-compliance of those conditions, those applications were dismissed, ultimately.

4. For one thing, the ex parte decree was passed after the written statement was filed. The contentions were there before the court below. The nature of transaction is a loan extended by the respondent Bank for supporting education for a B.Sc Nursing student. There are very many human factors which have to work within the judicial frame work and judicial minds, while dealing with such matters. There cannot be any straight jacket or mechanical mode of deciding such cases. We are constrained to say this in the case in hand because by this time, even according to the parties, there could have been waiver schemes or other softer modes of recovery which would have helped the first

appellant, the daughter of the other appellants, to march ahead in life with whatever education she could gain with the support of the bank loan. We are satisfied that sufficient cause has been shown to set aside the ex parte decree and also to have the delay condoned. The impugned order does not stand.

In the result, the appeal is allowed setting aside the impugned order and, as a consequence, allowing I.A.Nos.107 and 108 of 2014 in O.S.No.162 of 2012 on the file of the Court of Additional Sub Judge, North Paravur. Parties are directed to mark appearance before the court below on 11.08.2015. The court below will make an attempt to have the case referred for mediation, if possible for out of court settlement, having regard to the nature of the transaction.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)