

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

FAO.No. 357 of 2010 ()

AGAINST THE ORDER IN I.A.NO.153/2009 IN OS 119/2007 of PRINCIPAL
SUB COURT,KOLLAM DATED 30-06-2010

APPELLANT/PETITIONER/DEFENDANT:

ANTONY GOMAS, S/O. IMMANUEL, PEACE NET
UDAYA MARTHANDAPURAM, THILLARY, MUNDAKKAL WEST
KOLLAM.

BY ADVS.SRI.ALEX N.MATHEW (KOLLAM)
SRI.H.RAMANAN
SRI.JAMES JOSE

RESPONDENT/RESPONDENT/PLAINTIFF:

ANGNI STANLY VOOSE, W/O. STANLY VOOSE,
R.S.BHAVAN, VISHNNATH KAVU NAGAR, THIRUMULLAVARAM
KOLLAM PIN-691012.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

F.A.O.No.357 OF 2010

Dated this the 28th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is from the order in I.A.No.153/2009 in O.S.No.119/2007 on the file of the Principal Subordinate Judge's Court, Kollam. The appellant herein is the defendant in the suit. The suit was decreed ex parte for non appearance of the appellant. Thereafter the said application was filed, which was also dismissed, against which the present appeal is filed.

2. Heard the learned counsel on both sides.

The suit filed was one for realization of Rs.4,24,500/- from the defendant, who is the brother of the respondent. He filed an affidavit stating that his daughter Ms.Anzy Antony got employment in State Bank of India as Probationary Officer and as she had to undergo training in Coimbatore from 8.12.2008 to 17.01.2009, he had accompanied his daughter to Coimbatore on 6.12.2008. The case was

posted for trial on 9.12.2008 and it was included for the first time in the list also. On the ground that the appellant did not adduce any evidence in support of the averments in the affidavit, the application was dismissed.

We are of the view that the approach made by the court below is not correct especially in a matter where the parties are close relatives and decree for money was sought for also. At any rate adjudication on merits is warranted on the facts of the case. The reasons stated is clearly sound and cogent. Therefore, we allow the appeal, set aside the order in I.A.No.153/2009 and allow the prayer in I.A.No.153/2009 by restoring the suit - O.S.No.119/2007. The trial court will expedite the trial of the suit.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.