

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

FAO.No. 263 of 2008 ()

AGAINST THE ORDER IN I.A.NO.1687/2007 IN OS 175/2003 of SUB COURT,
OTTAPPALAM DATED 04-04-2008

APPELLANT(S):PETITIONERS

1. LATHA RAJAGOPALAN, W/O.RAJAGOPALAN
RESIDING AT.LATHIKA, CHERUPULASSERY AMSOM AND DESAM
OTTAPPALAM TALUK.

2. RAJAGOPALAN, S/O.M.K.THIRUMULPAD,
RESIDING AT LATHIKA, CHERUPULASSERY AMSOM AND DESAM
OTTAPPALAM TALUK.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.ANEESH K.M

RESPONDENT:RESPONDENT

THE MANAGING DIRECTOR, L.F.C.HIRE PURCHASE
PVT.LTD., REP. BY K.P.ACHUTHAN NAIR
S/O.K.V.ACHUTHAN NAIR, MUNDAMUKA AMSOM,
SHORNUR DESAM, OTTAPPALAM.

R1 BY ADV. SRI.V.B.UNNIRAJ
R1 BY ADV. SMT.R.S.GEETHA
R1 BY ADV. SMT.P.ANITHA

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 01-12-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

F.A.O No.263 of 2008

Dated this the 1st day of December, 2015

JUDGMENT

Antony Dominic, J.

Heard the learned counsel for the appellants and the learned counsel appearing for the respondent. This appeal is filed challenging the orders passed by the Sub Court, Ottappalam, dismissing I.A Nos.1687 of 2007 and 1686 of 2007 in O.S No.175 of 2003.

2. The suit was filed by the respondent for realisation of money. However, when the suit came up for trial on 4.4.2007, the appellants, the defendants in the suit, remained absent. Therefore, they were declared exparte and thereafter the suit was decreed exparte. Subsequently, I.A No.1687 of 2007 was filed by the appellants for setting aside the exparte order, along with I.A No.1686 of 2007, praying for condoning the delay of 104 days in filing the petition to set aside the exparte decree, ie.I.A No.1687 of 2007. By order dated 4.4.2008, I.A No.1686 of 2007 was dismissed and consequently, I.A No.1687 of 2007 was also

dismissed. It is, in this background that the appeal is filed.

3. Having heard the learned counsel for both sides and also going through the order impugned, we are inclined to think that the court below erred in dismissing the I.As filed by the appellants. The explanation offered by the appellants would show that, as the 2nd appellant was suffering from illness, they could not present in court when the suit came up for trial. The said claim of the appellants, has been substantiated in the oral evidence that was adduced by them. That apart, the court below has also doubted the genuineness of Ext.A1 medical certificate and the reasons assigned by the court below are not sustainable. In such circumstances, we set aside the order passed by the Sub Court, Ottappalam, dismissing I.A Nos.1686 and 1687 of 2007 in O.S No.175 of 2003. The suit will stand restored to the file of the Sub Court, Ottappalam, and the court below will dispose of the matter as expeditiously as possible.

3. Incidentally we may also mention that, at the time when the appeal was heard, both the counsel suggested that, the matter itself could be amicably settled if the case is referred for mediation. Now that the suit stands restored to file, we direct that the court below shall refer the suit for mediation and an

attempt shall be made to settle the matter amicably.

The appeal is disposed of accordingly.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge