

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

RFA.No. 256 of 2005 ()

AGAINST THE ORDER/JUDGMENT IN OS 145/2002 of PRL.SUB COURT,TRIVANDRUM
DATED 30-11-2002

APPELLANT(S)/DEFENDANT:

STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVT. SECRETARIAT
THIRUVANANTHAPURAM.

BY ADV. GOVERNMENT PLEADER E.M.ABDUL KHADAR (SR)

RESPONDENT(S)/PLAINTIFFS:

1. M.A.MANI, AGED 63 YEARS,
S/O.SUKUMARAN, EDITOR IN CHIEF, KERALA KAUMUDI
PETTAH, THIRUVANANTHAPURAM.

2. M.S.RAVI, AGED 55 YEARS,
S/O.SUKUMARAN, PRINTER & PUBLISHER, KERALA KAUMUDI,
PETTAH, THIRUVANANTHAPURAM.

R, R1 & R2 BY ADV. SRI.P.A.AHAMED
R BY SMT.RADHIKA RAJASEKHARAN, SC, CBI
R BY SRI.K.J.ANTONY, SC, CBI
R BY SRI.T.K.KUNHABDULLAH, SC, CBI
R BY SRI.GEORGE PHILIP, SC, CBI

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30-09-
2015, THE COURT ON 17/11/2015 DELIVERED THE FOLLOWING:

RFA NO.256/2005

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ANNEXURE A1: TRUE COPY OF THE LETTER DATED 13/7/2015 FROM THE PRINCIPAL SECRETARY TO GOVERNMENT.

ANNEXURE A2: TRUE COPY OF THE LETTER DATED 13/7/2015 FORM THE DISTRICT COLLECTOR THIRUVANANTHAPURAM.

ANNEXURE A3: TRUE COPY OF THE G.O. DATED 23/5/2005.

/TRUE COPY/ P.S. TO JUDGE.

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

R.F.A.No.256 of 2005

Dated this the 17th day of November, 2015

JUDGMENT

Sunil Thomas, J.

State of Kerala, aggrieved by the granting of a decree for a sum of Rs.10,00,000/- with 12% interest, as damages to the plaintiffs in O.S. No.145/2002 of the Court of the Principal Sub Judge, Thiruvananthapuram has preferred this appeal.

2. The case of the plaintiffs before the Court below was that they are the Chief Editor and printer and publisher respectively of a news paper. On 5/5/1999, they had published a news item in relation to handling of a case in Supreme Court, with respect to lower Periyar Tunnel. The above news item was claimed to be published in public interest, as was done by other newspapers also. Pursuant to the above publication, the State of Kerala, moved a contempt petition before the Hon'ble Supreme Court on the ground that the

news item published was scandalous, malicious, vilificatory and defamatory against the then Advocate General, a Senior Advocate of the Supreme Court and the Standing Counsel for the State of Kerala in the Supreme Court. It was alleged that the plaintiffs, thereby brought the administration of justice into disrepute and undermined the dignity of the apex court and thereby committed criminal contempt. Notices were served on the plaintiffs. The case was defended by the plaintiffs. The contempt petition was dismissed on 6/9/2001. According to the plaintiffs, the contempt petition was filed with a malicious motive and thereafter the petitioners in the contempt petition had given maximum publicity. There was a concerted effort to bring down the reputation of the plaintiffs and the circulation of the news paper. The petitioners in the contempt petition had a mala fide motive of injuring the plaintiffs, rather than to vindicate the law. There was no reason for filing such a contempt petition, that too, without obtaining sanction from the Attorney General. Hence, notice was served on the defendant state claiming damages, which was replied refuting the claim. The suit was thereafter filed seeking a decree for a sum of Rs.10,00,000/- as damages

with interest at 18% till recovery.

3. In spite of the notice served on the defendant, the State did not file any written statement. On the basis of the proof affidavit filed by the plaintiffs and Exts.A1 to A9 marked on their side, the suit was decreed as prayed for with future interest at the rate of 12% from the date of the suit till the date of recovery.

4. Aggrieved by the above judgment and decree, the present appeal was preferred along with an application to condone the delay of 550 days, which was ultimately condoned. The reason stated in the appeal memorandum for the non-appearance of the defendant on the date of posting was that the posting date was wrongly noted by the advocate clerk. However, the details of it were not forthcoming.

5. When the delay condonation application came up for hearing, the Government Pleader took up the stand that though the suit was decreed on 30/11/2002, the Government Pleader who appeared before the trial court had applied for the certified copy and received it on 26/8/2003. The matter was not intimated to the Government until an application for attachment in

execution of the decree was filed. At the time of hearing of the delay condonation petition, the learned Government Pleader who appeared before this Court, had submitted that necessary proceedings were initiated against the persons who were responsible for the laches. This was recorded by this Court. It was further disclosed that, to avoid attachment proceedings, a sum of Rs.12,15,443/- was deposited on 9/6/2005, while the matter was pending before this Court. Recording the submission of the learned Government pleader that appropriate legal proceedings were contemplated, the delay was condoned and the matter was posted for admission hearing.

6. After having considered the merits of the case, we are inclined to admit the case. The matter was heard at the admission stage itself on the basis of the available records.

7. Regarding the decision to deposit the decree amount while the appeal was pending before this Court, this Court entertained doubt regarding the manner in which the matter was handled and suspected an over anxiety at some level to satisfy an uncontested decree. By order dated 2/7/2015, the original file of the Government, in which the decision was taken to deposit

the execution amount, was directed to be produced. A memo dated 28/7/2015 was filed by the learned Government Pleader stating that the original files have been destroyed. Taking serious note that the administration files have been destroyed while the appeal was pending before this Court, the strong displeasure of this Court was conveyed to the appellant through the learned Government Pleader. Probably, prompted by the possibility of a detailed probe being ordered by this Court as expressed by this Court by order dated 11/8/2015, by a subsequent memo dated 31/8/2015 digitalized copy of the Government file was made available by the Government .

8. We have perused the administration files and are not all satisfied by the way in which the case was handled, indicating lethargy at some level. Further, while the matter was pending before this Court, after having suffered an ex parte decree arising out of a matter initiated by the Government before the Supreme Court, a decision was taken by the Government to deposit the uncontested decree amount, though with a direction to request to withhold the payment. We are satisfied that this is a fit case which requires detailed investigation to identify the

negligent officer or officials involved and to take appropriate action, as undertaken by the learned Government Pleader earlier and recorded by this Court in para 7 of the order in C.M.Appl.No.735/2005 dated 25/5/2006 and to take it to its logical conclusion.

9. Admittedly the notice was served on the Government in the original suit. The Government appeared and sought time for filing the written statement. Thereafter, the Government remained absent and written statement was not filed. The only reason stated in the appeal memorandum as well as in the delay condonation application is that there was wrong noting of the date. The above averment is absolutely bald and bereft of any details. However, absence of defendant by itself does not enable the Court to grant a decree as prayed for, without proper appreciation of pleadings and evidence. Though written statement was not filed, the reply of the Government was on record. The Court has not considered this, while appreciating the ex parte evidence. The judgment of the Court below also discloses that the court has not evaluated the materials filed before it. It seems to have accepted the entire version of the

plaintiffs without going into the question as to whether any malicious prosecution was involved and whether there was any resultant damages. Since the public money is involved, it is all the more essential that there should be an adjudication on merits. Though, we are not fully satisfied with the reasons stated by the Government for excusing absence on the date of posting, we feel that one more opportunity can be granted to the defendant and the Government shall not suffer due to lethargy at some level. Hence, the impugned judgment is not legally sustainable and is liable to be set aside.

In the result, the appeal is allowed. The judgment and decree of the court below is set aside and the matter is remanded to the court below for fresh consideration after giving a reasonable opportunity to both sides to adduce fresh evidence subject to the condition that on the date of appearance to be mentioned hereinafter, the appellant/defendant shall appear and file written statement in answer to the plaint claim. The appellant shall also submit before this court within one month from today, an action taken report on the proposed proceedings to identify the person responsible. The court below shall try to

dispose of the suit at the earliest, having regard to the pendency of the suit since long and untrammelled by any of the observation made above. It is made clear that whatever observations made above are limited for the purpose of disposing this appeal and no observation is made regarding the merits of the case. Both sides shall appear before the court below on 22/12/2015.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

