



2025:KER:31299

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

FAO NO. 28 OF 2025

AGAINST THE ORDER DATED 20.01.2025 IN I.A.NO.12 OF 2024 IN

OS NO.71 OF 2020 OF SUB COURT, PERUMBAVOOR

APPELLANT/PETITIONER/DEFENDANT:

JACOB MATHEW
AGED 45 YEARS
S/O MATHUKUTTY, MANGALATH HOUSE, NORTH
MAZHUVANNOOR KARA, AIRAPURAM VILLAGE, KUNNATHUNAD
TALUK, ERNAKULAM DISTRICT, KERALA, PIN - 682311

BY ADVS.
C.S.MANU
DILU JOSEPH
C.A.ANUPAMAN
T.B.SIVAPRASAD
NEETHU.K.SHAJI
C.Y.VIJAY KUMAR
MANJU E.R.
ALINT JOSEPH
PAUL JOSE
DAINY DAVIS
RILNA RADHAKRISHNAN
MAHESH KUMAR K.



2025:KER:31299

F.A.O. No.28 of 2025

-: 2 :-

RESPONDENT/RESPONDENT/PLAINTIFF:

SALAJ J.P.
AGED 41 YEARS
S/O JOHN, KUTTIPUZHA HOUSE, SOUTH MARADY P.O,
SOUTH MARADY KARA, MARADY VILLAGE,
MUVATTUPUZHA TALUK, KERALA, PIN - 686673

BY ADV NAVEEN THOMAS

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
HEARING ON 10.04.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



2025:KER:31299

SATHISH NINAN & SHOBA ANNAMMA EAPEN, JJ.

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F.A.O. No.28 of 2025

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Dated this the 10th day of April, 2025

JUDGMENT

Sathish Ninan, J.

The application filed by the appellant, who is the defendant, to set aside the *ex parte* decree was dismissed by the trial court. The suit is one for recovery of an amount of Rs.25,82,248/-. The suit was posted to 14.03.2024 for filing written statement. According to the appellant, since he was away at Bangalore, he could not make arrangements to file the written statement, which resulted in the *ex parte* decree.

2. The application was opposed by the respondent-



2025:KER:31299

F.A.O. No.28 of 2025

-: 2 :-

plaintiff. The reason stated by the appellant did not find favour with the Court, and the applications were dismissed.

3. We have heard the learned counsel on either side.

4. The suit is of the year 2020. The suit is one for realisation of money. On an earlier occasion also, namely on 09.06.2022, the suit was decreed *ex parte* for failure of the defendant-appellant to appear. When the decree was sought to be executed, the appellant sought to set aside the *ex parte* decree with a delay petition for condoning the delay of 201 days. The applications were allowed on payment of cost.

5. Even after the *ex parte* decree was set aside as above, the appellant-defendant failed to file written



2025:KER:31299

F.A.O. No.28 of 2025

-: 3 :-

statement. The *ex parte* decree was set aside on 10.10.2023 and the appellant had time till 04.03.2024 to file written statement. However, he failed to do so. The contention of the petitioner that he was away at Bangalore is evidently only a lame excuse.

6. In the afore circumstances, we find that the trial court was justified in having refused to set aside the *ex parte* decree. The learned counsel for the appellant made a fervent plea that a last opportunity may be granted to the appellant-defendant to contest the suit and to have his contentions agitated before the court.

7. Every endeavour is to be made by the Court to have a *lis* decided on merits rather than a disposal on default. Though the conduct of the appellant-defendant



2025:KER:31299

F.A.O. No.28 of 2025

-: 4 :-

is not appreciable, we are of the opinion that a last opportunity can be granted to the appellant-defendant to urge his contentions and a judgment invited on merits. However, this can be permitted only on securing the interests of the respondent-plaintiff also. We are of the opinion that this is a fit case where the appellant-defendant shall furnish a bank guarantee for the decree amount as a condition to set aside the *ex parte* decree.

Resultantly, the appeal is disposed of as hereunder;

(i) The Appeal will stand allowed and the *ex parte* decree set aside, on condition that the appellant-defendant furnishes bank guarantee for the decree amount, inclusive of interest and cost, before the trial court, on or before



2025:KER:31299

F.A.O. No.28 of 2025

-: 5 :-

10.07.2025 and also files his written statement, if any, on or before such date.

(ii) On the *ex parte* decree being set aside, the trial court will make every endeavour to have the suit tried and disposed of within three months thereafter.

(iii) In case of failure to comply with the conditions stipulated supra, the appeal will stand dismissed affirming the impugned order.

Sd/-

**SATHISH NINAN
JUDGE**

Sd/-

**SHOBA ANNAMMA EAPEN
JUDGE**

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