

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

Arb.A.No. 18 of 2015 ()

APPELLANTS/RESPONDENTS:

1. ABDUL JABBAR AGED 60 YEARS
S/O.KOCHU, UVATTIL HOUSE, U.C.COLLEGE P.O.
CARMEL SEMINARY ROAD, ALUVA, ERNAKULAM DISTRICT

2. ABDUL NAJEEB AGED 54 YEARS
S/O.KOCHU, UVATTIL HOUSE, U.C.COLLEGE P.O.
CARMEL SEMINARY ROAD, ALUVA, ERNAKULAM DISTRICT

3. ALEEMA JABBAR AGED 52 YEARS
W/O.ABDUL JABBAR UVATTIL HOUSE, U.C.COLLEGE P.O.
CARMEL SEMINARY ROAD, ALUVA, ERNAKULAM DISTRICT

BY ADV. SRI.B.PREMNATH (E)

RESPONDENT/PETITIONER:

MAHINDRA & MAHINDRA FINANCIAL SERVICE LTD
GATEWAY BUILDING, APOLLO BUNDER
MUMBAI 40001 HAVING ITS REGIONAL OFFICE AT 37/3453
4TH FLOOR FLOOR
NOEL HOUSE, THRIKKAKARA, PADAMUGAL
ERNAKULAM DISTRICT
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
PADMARAJ.K., S/O.N.VIJAYARAJAN, AGED 25 YEARS
ASSISTANT LEGAL MANAGER
MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD.
ERNAKULAM BRANCH

THIS ARBITRATION APPEALS HAVING COME UP FOR ADMISSION ON
26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

Arb.Appeal No.18 OF 2015

Dated this the 26th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed from the order in I.A.No.5373/2014 in Arb.O.P.No.1039/2014 of the Additional District Court V, Ernakulam.

2. We heard the learned counsel for the appellants and the learned counsel appearing for the respondent after notice was served on him.

3. The learned counsel for the appellants submitted that the impugned order was passed without giving sufficient opportunity to show cause. It is submitted by the learned counsel for the respondent that on that day even though the appellants appeared pursuant to notice issued from the court below asking the appellants to show cause, not even an objection or an affidavit has been filed.

4. What is sought for by the learned counsel for the appellants is an opportunity to file their objections to the I.A.. It is also submitted

that there is some dispute with regard to the amount due also.

5. We are inclined to grant an opportunity to the appellants to file objections. The learned counsel for the respondent submits that in the meanwhile, the property may not be encumbered. In the affidavit filed in support of the stay petition, in paragraph 6 it is stated that the property belongs to first and third appellants. There is an order of attachment against the second appellant also. It is further stated that the first appellant and his wife will not dispose of the scheduled property. It is also stated that the marriage of the daughter is fixed to take place in May 2015. One of the other contentions taken by the learned counsel for the appellants is that the property is already mortgaged to Veliyathunadu Service Co-operative Bank.

6. We are not going into the merits of the contentions of the parties. The impugned order is set aside. The appeal is allowed and a fresh order will be passed by the District Court after hearing both sides. It is submitted that the case is posted to 5.3.2015, before which date, the appellants will show cause and file objections in the matter. In the meanwhile, the appellants will not encumber the property or transfer

the property scheduled in the application for attachment, namely I.A.No.5373/2014. The learned counsel prayed that this may not stand in the way of seeking financial assistance from the very same Co-operative Bank mentioned above for the purpose of the marriage of the daughter as otherwise it will cause much hardship to the appellants. It is made clear that the order as above will not stand in the way of availing financial assistance for the said marriage, from the very same bank.

The appeal is accordingly disposed of.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

