

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

Crl.MC.No. 5633 of 2013

**AGAINST THE ORDER IN CRL.A.NO. 252/2008 OF ADDITIONAL SESSIONS COURT
(ADHOC-II), ERNAKULAM DATED 07-01-2011**

PETITIONER/APPELLANT/RESPONDENT :-

**K. JOSEPH, AGED 52 YEARS,
S/O.ANTONY, MANAGING PARTNER,
EBENEZER KURIES & ENTERPRISES, C.C.16/1648,
WELFARE ROAD, THOPPUMPADI, KOCHI-5.**

BY ADV. SRI.P.T.JOSE

RESPONDENTS/RESPONDENT/PETITIONER :-

- 1. MARY RAPHEL, AGED ABOUT 69 YEARS,
W/O.RAPHEL, RESIDING AT PALLIPARAMBIL,
E.S.I. ROAD, PALLURUTHY, KOCHI-682006.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682031.**

R2 BY SMT.V.H.JASMINE, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05-08-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 5633 of 2013

APPENDIX

PETITIONER(S)' ANNEXURES :-

**ANNEXURE-A1 : THE CERTIFIED COPY OF THE ORDER DATED 07.01.2011
PASSED BY THE ADDITIONAL SESSIONS JUDGE ADHOC-II,
ERNAKULAM.**

**ANNEXURE-A2 : THE CERTIFIED COPY OF THE ORDER PASSED BY THE PRINCIPAL
MUNSIFF, KOCHI DATED 1/12/2007 IN EA 144/07 IN EA 215/04 IN EP
325/02 IN O.S.440/99.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

P.UBAID, J.

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Crl.M.C.No.5633 of 2013

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Dated this the 5th day of August, 2015

ORDER

The petitioner herein is the plaintiff in O.S.No.440 of 1999 of the Principal Munsiff Court, Kochi. After full trial in the suit, he obtained a decree against the defendant. During the execution proceedings, brought as E.P.No.325 of 2002, the second judgment debtor (first respondent herein) filed E.A.No.144 of 2007 under Section 340 Cr.P.C. In the said proceeding, the Executing Court passed orders directing the respondents therein to return some documents to the petitioner therein, and also further ordered that on failure to return the documents as directed, proceedings under Section 340 Cr.P.C. will be initiated. In short, the order passed by the Court is not in fact an order meant under Section 340 Cr.P.C. As an initial step, the learned Munsiff made some direction to return the documents, cautioning that proceedings under Section 340 Cr.P.C. will be initiated in case of failure to comply with the direction. Practically, it is not an order to be appealed against under Section 341 Cr.P.C. Anyway, the petitioner herein preferred an appeal against the said order before the Court of

Session, Ernakulam as Crl.Appeal No.252 of 2008. On 07.01.2011, the learned Additional Sessions Judge dismissed the said criminal appeal. The said order is under challenge in this proceeding brought under Section 482 Cr.P.C.

2. As regards the right forum to which appeal can be preferred under Section 341 Cr.P.C., against orders passed by the Civil Court, this Court has recently settled the legal position. If at all, an appeal under Section 341 Cr.P.C. is possible against the impugned order passed by the Executing Court, such appeal must have been filed before the District Court, Ernakulam as a Civil Miscellaneous Appeal. Instead of filing a proper appeal before the proper forum, the petitioner herein wrongly filed a criminal appeal before the Court of Session. Anyway, that wrong appeal was dismissed by the learned Additional Sessions Judge. In such a situation, nothing can be done by this Court under Section 482 Cr.P.C. If at all an appeal is possible under section 341 Cr.P.C., such remedy is still open to the petitioner, subject, of course, to the question of delay. If there is final order under Section 340 Cr.P.C., the petitioner can file a CMA before the District Court, and not a Criminal Appeal before the Court of Session. In the above circumstances, this Crl.M.C. can be closed, without prejudice to the right of the petitioner to file a proper appeal before the proper forum, subject to the question of delay, if there is final order under Section 340

Cr.P.C.

In the result, this Crl.M.C. disposed of, without prejudice to the right of the petitioner to file a proper appeal before the proper forum, against the orders passed under Section 340 Cr.P.C. by the Munsiff's Court, Kochi, subject, of course to the question of delay, which will have to be appropriately considered by the District Court, if such application comes.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE