

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

CRP.No. 581 of 2013 ()

OS. NO.874/2011 OF II ADDITIONAL SUB COURT, KOZHIKODE.

.....

REVISION PETITIONER/DEFENDANT:

**M/S. MALABAR PALACE,
MANUEL SONS HOTEL (P) LTD.,
G.H. ROAD, KOZHIKODE-1,
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI. P.M. ANTONY, S/O. P.T.MANUEL.**

**BY ADVS.SRI.SHYAM PADMAN,
SRI.A.RANJITH NARAYANAN,
SRI.S.K.SAJU,
SMT.A.SIMI.**

RESPONDENT/PLAINTIFF:

**MUHAMMED HAROON M.P., AGED 47 YEARS,
S/O. HAJI P.ABDURAHIMAN, QASAR, 4/373 A,
GANDHI ROAD, KOZHIKODE-32.**

**BY ADVS. SRI.P.AHARISH,
SRI.NIRMAL. S.**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 21-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

ANNEXURE A1 COPY OF THE PLAINT DATED 15/11/2011 IN O.S. NO.874/2011.

**ANNEXURE A2 COPY OF THE WRITTEN STATEMENT DATED 04/08/2012 IN
OS. NO.874/2011.**

ANNEXURE A3 COPY OF THE IMPUGNED DOCUMENT DATED 01/07/2010.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
C.R.P. No. 581 of 2013
.....

Dated this the 21st day of July, 2015

ORDER

In a suit for money a document is produced, which contains, some terms including a promise to repay the amount involved. It seems that from the very beginning, the defendant has been clamouring with the contention that the said document could not be treated as an agreement, whereas, it was a bond. A specific contention was taken up in the written statement to that effect by contending that the said document, being a bond, is inadmissible in evidence, as it is insufficiently stamped.

2. In spite of the specific contention raised in the written statement, no preliminary issue has been raised by the court below. When the document was sought to be marked in the proceedings, it was objected to by the learned counsel for the defendant and at that stage, the court below has passed the impugned order.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. It seems that the court below has committed a grave error in relying on the definition of 'bond', which contained in the old Section 2 of the Negotiable Instruments Act, instead of relying on the provisions of the Kerala Stamp Act, which are *pari materia* to the Indian Stamp Act 1899. Therefore, it seems that the court below has committed grave illegality in taking a decision in the matter, through the impugned order. This Court is not making any opinion as to the correctness or otherwise of the ultimate decision rendered by the court below in the matter. The procedure

adopted, as well as the statute applied, by the court below has made the impugned order totally illegal.

5. When this revision has come up for hearing, the learned counsel for the respondent has pointed out that this revision petition is not maintainable as the said order is not amenable to revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908. True that, going by the guidelines given in ***Sri. Rathnavarmaraja v. Smt. Vimla*** [AIR 1961 SC 1299], a revision is not maintainable in such a matter as the dispute is between the plaintiff and the State, and not inter-parties. Even though the said decision was rendered on the Court Fees Act, the said decision is squarely applicable to the facts and circumstances of this case also, when it relates to the insufficiency of stamp duty. True that it is a matter between the State and the plaintiff, and ultimately the defendant has no say in it. At the same time, it cannot be said that the defendant has no duty to point out those aspects. It seems that a specific contention

to that effect has been resorted to by the petitioner in Annexure A2 written statement.

6. It seems that the CRP is filed in the year 2013. The petitioner has been diligently prosecuting the matter before this Court. The matter has not been heard so far. At this juncture, it is not at all fair to throw out the CRP through a judicial death by stating that the CRP is not maintainable. This Court has ample powers in such cases to convert a civil revision petition to a matter under Article 227 of the Constitution of India. The Registry is directed to convert this CRP as O.P.(C) and number it as Original Petition.

7. As pointed out earlier, this Court is not expressing any opinion with regard to the correctness of the ultimate decision taken by the court below in the matter. It seems that the court below has applied Section 2 of the Negotiable Instruments Act, 1881. Section 2 of the Negotiable Instruments Act, 1881 was repealed through the Amending Act of 1891. The court below has chosen to rely on the N.I.

Act (old Act) to conclude the question as to whether it is a 'bond' or otherwise. The court below has not cared to go through the provisions of the Kerala Stamp Act or the Indian Stamp Act. On that simple score itself, the impugned order has become totally illegal and therefore, the same is liable to be set aside.

8. Over and above it, the learned counsel for the petitioner has pointed out that the petitioner has placed reliance on nine decisions of various courts, including the Apex Court and this Court, and the learned counsel for the plaintiff has also placed reliance on various decisions in the matter, before the court below. It seems that the court below has not adverted to any of the decisions in the matter. Therefore, the court below shall hear both the sides and enter a finding on the preliminary issue, and proceed with the suit in accordance with law, for which the matter has to be remitted to the court below.

In the result, this Original Petition is allowed and the

impugned order is set aside. The matter is remitted to the court below to decide the said preliminary issue, and to proceed with the suit in accordance with law.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge