

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYASHTA, 1937

CRP.No. 13 of 2015

ORDER DTD.E.P.NO.58/2010 IN OS.NO.119/2003 OF SUB COURT, MAVELIKKARA
.....

REVISION PETITIONER(S)/JUDGMENT DEBTORS 4 TO 10:

1. SAIFUDHEEN,
ODAIKAL THEKKATHIL, KAYAMKULAM MURI,
KAYAMKULAM VILLAGE.
2. BIJUMON,
ODAIKAL THEKKATHIL, KAYAMKULAM MURI,
KAYAMKULAM VILLAGE.
3. ANIMON,
ODAIKAL THEKKATHIL, KAYAMKULAM MURI,
KAYAMKULAM VILLAGE.
4. RESEENA
ODAIKAL THEKKATHIL, KAYAMKULAM MURI,
KAYAMKULAM VILLAGE.
5. RINSA BHAI,
ODAIKAL THEKKATHIL, KAYAMKULAM MURI,
KAYAMKULAM VILLAGE.
6. SAJI BHAI,
ODAIKAL THEKKATHIL, KAYAMKULAM MURI,
KAYAMKULAM VILLAGE.
7. ASEENA BHAI,
ODAIKAL THEKKATHIL, KAYAMKULAM MURI,
KAYAMKULAM VILLAGE.

BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR

msv/

CRP No. 13 of 2015

RESPONDENT(S)/DECREE HOLDERS:

1. **N.S.PILLAI,
S/O.KRISHNA PILLAI, MANAGING PARTNER,
KAIRALY AUTO MOBILES, NEAR M.S.M.COLLEGE, KAYAMKULAM,
RESIDING AT PULIVELIL PADEETTATHIL, VETTIYAR,
VETTIYAR VILLAGE - 690 557.**
2. **BHAVANIYAMMA S. PILLAI,
PULIVELIL PADEETTATHIL, VETTIYAR,
VETTIYAR VILLAGE 690 557.**
3. **BIJU S. PILLAI,
PULIVELIL PADEETTATHIL, VETTIYAR,
VETTIYAR VILLAGE 690 557.**

**R1 BY ADVS. SRI.RINNY STEPHEN CHAMAPARAMPIL
SMT.ASHA ELIZABETH MATHEW**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
08-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

[CR]

B.KEMAL PASHA, J.

.....
C.R.P. No.13 of 2015
.....

Dated this the 8th day of June, 2015

ORDER

A suit for injunction was filed in the year 2003 as O.S. No.119 of 2003 and within no time the plaint was amended by incorporating a relief for specific performance of a Contract. The matter continued till 02.02.2008. Ultimately the matter was referred to the Lok Adalath and it came up before the Lok Adalath on 02.01.2008. The parties willingly settled the matter as the defendants agreed to settle the matter by paying an amount of ₹3,75,000/- to the plaintiffs. As per the settlement, an award was passed by the Lok Adalath on 02.01.2008.

2. It seems that some strange terms have been incorporated in the award passed by the Lok Adalath. The

award is produced as Annexure 1. On agreeing to pay the said amount of ₹3,75,000/- to the plaintiffs, the defendants wanted to make the payments in two instalments. By way of the first instalment, they issued a post dated cheque for ₹1,75,000/- dated 01.06.2008 drawn on the Federal Bank Ltd. Kayamkulam College Junction Branch from the accounts of the 6th defendant, for and on behalf of the other defendants. For making the payment of the balance amount of ₹2,00,000/- by way of the second instalment, similarly, another post dated cheque for ₹2,00,000/- dated 01.12.2008 was also issued. As per clause (3) of the award, it has been made clear that the said cheques were so issued by the 6th defendant, for and on behalf of the other defendants. Strangely enough, clause 5 was also incorporated by stating that in case of any difficulty in recovering the amounts based on the cheques, the plaintiffs shall resort to necessary steps based on the cheques.

3. On presentation of the first cheque dated

01.06.2008, the same was honoured. When the other cheque dated 01.12.2008 was presented, it returned dishonoured and the plaintiffs did not get the amount of ₹2,00,000/- covered by it. As there is failure to arrange the payment towards the cheque dated 01.12.2008, the award is put in execution. The judgment debtors entered appearance and contended that the decree is not executable in view of the terms contained in the award. The court below has overruled the said contentions, rejected the contentions in toto, and passed order dated 25.08.2014 by holding that since the compromise decree has not been complied with, the decree holder is entitled to execute the same. The said order is under challenge here.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondents. The learned counsel for the petitioners has resorted to two contentions as follows: (1) In the execution petition the decree holders have not put it in black and white as to the date on which the

cheque was presented and the date on which the cheque happened to be dishonoured, and also as to whether a statutory notice has been issued on such dishonour etc. (2) Plaintiffs by accepting the cheque issued by the 6th defendant alone, in discharge of the liability of the other defendants also, have released all the defendants other than the 6th defendant from the liability and therefore, execution proceedings cannot be taken against the defendants other than the 6th defendant.

5. It seems that for getting a decree in the matter, the plaintiffs were running from pillar to post for the period from 2003 onwards. Finally, they were referred by the court below to the Lok Adalath. It is an unfortunate situation that they had to appear in the Lok Adalath to get an award like the award mentioned in Annexure 1. When the suit itself was settled and the liability of the defendants was fixed at ₹3,75,000/-, the defendants were directed to issue two cheques for the discharge of the said liability. A vague term

as clause 5 has been incorporated by stating that in case of any difficulty for recovery of the amount based on the cheque, the plaintiffs shall take steps on such cheque. What is intended is not clearly discernible from the said clause. When the liability was agreed as an amount of ₹3,75,000/- by all the defendants willingly, and as they have agreed to pay the said amount, the liability has been crystallized and a decree should stop there. The other one, that is with regard to the cheques, is the mode of payment and not the discharge of the liability. The mode of payment is prescribed through two cheques. If any of the cheques is not honoured, the decree holder need not be driven to court for filing a complaint under Section 142 of the Negotiable Instruments Act alleging an offence under Section 138 of the N.I. Act. This should be an eye opener to the Lok Adalaths, Mediation etc. After fighting for five years, the defendants agreed to pay the said amount of ₹3,75,000/-. In stead of noting the dates of two instalments to be paid, the plaintiffs

were compelled to accept two post dated cheques; one cheque was honoured and the second one was not honoured. In such case, the plaintiffs cannot be compelled to initiate other criminal or civil proceedings in the matter once again for getting the liability fixed. When the total liability has already been fixed, it is as good as the decree.

6. When the decree holders are not expected to initiate further legal actions by way of a fresh suit or a criminal complaint, there is no meaning in contending that a statutory notice has not been issued to the defendants or judgment debtors. Therefore, the argument that no statutory notice has been issued is of no merit at all. Similarly, the date of presentation of cheque, the date of its dishonour etc. also do not assume any importance at all.

7. The petitioners have no case even at present that there were sufficient funds in the Bank's accounts of the 6th defendant for honouring the cheque dated 01.12.2008. So long as the petitioners have no such case, the contentions

that the date of presentation of the cheque, the date of dishonour etc. are not shown in the execution proceedings, are also of no merit at all.

8. Regarding the next point, it has to be noted that in clause (3) of Annexure 1 award it has been specifically stated that the cheques were being issued by the 6th defendant for him as well as for the other defendants also. Further, clause (1) also reveals that the liability of the defendants have been fixed and settled as an amount of ₹3,75,000/-. When the amounts were fixed and the mode of payment alone is prescribed, the mode of payment has no importance at all. Therefore, the defendants other than the 6th defendant cannot be heard to say that they have no liability to meet the award. All the persons together could not issue a cheque and that was the only reason why the cheques were caused to be issued by the 6th defendant alone for him as well as for an on behalf of other defendants also.

9. By the mere fact that petitioners were given an opportunity to issue two cheques for the award amount of ₹3,75,000/-, the decree holders cannot be driven to the corridors of courts once again for initiating fresh civil or criminal proceedings for the recovery of the amount covered by the cheque. It seems that only part of the award is met, and an amount of ₹2,00,000/- happens to be the balance amount for the period from 01.12.2008. The decree holders are entitled to get the decree for the said amount with interest and costs, executed. The impugned order does not suffer from any illegality, irregularity or impropriety. This CRP is devoid of merits, and is only to be dismissed, and I do so.

10. In the result, this Civil Revision Petition fails and is dismissed with costs.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge