

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

CRP.No. 171 of 2015

AGAINST THE ORDER DTD. 23.02.2015 IN E.A.47/2015 IN E.P.193/2014 IN
OS 368/2011 of SUB COURT, ALAPPUZHA

REVISION PETITIONERS/PETITIONERS/JUDGMENT DEBTORS:

1. A.S.RAJAN, S/O. P.K. SREEDHARAN, AGED 56 YEARS,
RESIDING AT ANANDAMANDIRAM, KAITHAVANA MURI,
SANATHANAPURAM P.O., PAZHAVEEDU VILLAGE,
AMBALAPUZHA TALUK, ALAPPUZHA DISTRICT,
PIN - 688 003.
2. SUDHA V.D., W/O.A.S. RAJAN, AGED 50 YEARS,
RESIDING AT ANANDAMANDIRAM, KAITHAVANA MURI,
SANATHANAPURAM P.O., PAZHAVEEDU VILLAGE,
AMABALAPUZHA TALUK, ALAPPUZHA DISTRICT,
PIN - 688 003.

BY ADV. SRI.MAURICE VINCENT T.N.

RESPONDENT/CR. PETITIONER/DECREE HOLDER:

M.R.SALINAKUMAR, S/O. RAMAKRISHNA KURUP,
AGED 51 YEARS, MADAPURACKAL HOUSE, THAYANKARI P.O.,
EDATHUA VILLAGE, KUTTANAD TALUK, ALAPPUZHA DISTRICT,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER,
SMT. REKHA S. KUMAR, AGED 40 YEARS,
MADAPURACKAL HOUSE, THAYANKARI P.O., EDATHUA VILLAGE,
KUTTANAD TALUK, ALAPPUZHA DISTRICT.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 09-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Civil Revision Petition No.171 OF 2015

Dated this the 9th day of April, 2015.

O R D E R

Under challenge is the order dated 23.02.2015 whereby the court below dismissed E.A.No.47/2015 in E.P.No.193/2014 in O.S.No.368/2011.

2. The petitioners suffered an ex parte decree. The suit was one for recovery of Rs.5,10,450/- on the ground that the petitioners had received advance sale consideration in pursuance to an agreement for sale whereby they have agreed to sell the property to the respondent herein. The petitioners entered appearance in the suit and filed written statement contending that they had suffered much loss because of non performance of contract on the part of the respondent. However, the suit was decreed ex parte directing the petitioners to pay Rs.5,50,000/- together with interest at 6% per annum. The petitioners have filed I.A.No.51/15 for setting aside the ex parte decree and that is still pending consideration. The petitioners have also filed an

application under Order 38 Rule 9 read with Section 151 of the Code of Civil Procedure to lift the attachment. The petitioners wanted the attachment effected to be lifted on condition that they deposit the amount shown in the conditional order of attachment. The petition was opposed by the decree holder.

3. It is seen from the order of the court below that the decree holder has taken out execution of the decree and execution petition has been filed and the E.P amount shown is Rs.7,33,466/- together with 6% interest per annum as per the decree. It appears that there was an attachment before judgment and while passing ex parte decree, charge was created on the plaint schedule property. The court below dismissed the application filed by the petitioners holding that it is not maintainable and also that lifting the attachment may affect the rights of the decree holder.

4. Learned counsel appearing for the petitioners pointed out that the court below was not right in dismissing the application and it ought to have lifted the attachment on the petitioners depositing the amount shown in the conditional order

of attachment. It is also pointed out that they are willing to pay the amount shown in the attachment schedule but they are not willing to pay the decree amount since the case of the defendant is that he has suffered loss due to the non performance of contract on the part of the plaintiff.

5. Even though the order of the court below may suffer from legal infirmities, the ultimate conclusion drawn is justifiable. It is seen that there was a conditional order of attachment over the property on a petition moved by the plaintiff in the suit. Ultimately suit was decreed and charge was created over the plaint schedule property. Once charge was created, attachment does not survive. Therefore, the petition filed under Order 38 Rule 9 CPC is not maintainable. It is also true that the petitioners have filed a petition to set aside the ex parte decree and that is still pending consideration.

If the petitioners are so advised, they may take such proceedings as are available to deposit such amount as covered by the decree and the property exonerated from the charge. Anyhow, petition for lifting the attachment is not maintainable

since there is no attachment survives now and decree has been granted in favour of the plaintiff in the suit.

There is no merit in the petition. It is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True copy //

P.A. To Judge.

smp

