

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

CRP.No. 544 of 2014 ()

REVISION PETITIONERS/JUDGMENT DEBTORS 3 & 8:

- 1. ROY GEORGE,
MARUTHY ELECTRONICS, PUTHOOR,
RESIDING AT SANIL BHAVAN,
PUTHOOR, KOLLAM DISTRICT.**
- 2. K.RAMACHANDRAN PILLAI,
KRISHNA VILASOM, VELLIMON, KUNDARA.**

**BY ADVS.SRI.N.DHARMADAN (SR.)
SMT.D.P.RENU**

RESPONDENTS/DECREE HOLDERS & JUDGMENT DEBTORS 1,2,4,5 TO 7 & 9 TO 11:

- 1. SREE VIDHYADHIRAJA CHARITABLE MEDICAL TRUST,
ANCHALUMMOODU, KOLLAM-691 001.**
- 2. DR.MOHANACHANDRAN,
S/O.C.P.KUNJUNNI PILLAI,
RESIDING AT SREESANKARA BHAVAN, MARUNTHAL CHERRY,
THRIKKADAVOOR VILLAGE, KOLLAM DISTRICT-691 001.**
- 3. DR.PREMACHANDRAN,
S/O.C.P.KUNJUNNI PILLAI
RESIDING AT SREESANKARA BHAVAN, MARUNTHAL CHERRY
THRIKKADAVOOR VILLAGE, KOLLAM DISTRICT-691 001.**
- 4. SREECHITRA SMARAKA CHARITABLE SOCIETY,
A SOCIETY REGISTERED UNDER THE TRAVANCORE COCHIN LITERARY
SCIENTIFIC & CHARITABLE SOCIETIES REGISTRATION ACT 1955
REPRESENTED BY JAYALAKSHMI, JAYA BHAVAN, PORUVAZHY
SASTHAMCOTTA-690 521.**
- 5. B.JAYALEKSHMI,
PROFESSOR, PRESIDENT
SREECHITRA MEMORIAL CHARITABLE SOCIETY, ANCHALUMMOODU
KOLLAM, RESIDING AT JAYA BHAVAN, PORUVAZHY
SASTHAMCOTTA-690 521.**

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- 6. HARSHAKUMAR,
KUMAR BANKERS, EZHUKONE, KOTTARAKKARA-691 506.**
 - 7. SUDHEENDRAN,
PULAYARAZHIKOM, PERINADU, KOLLAM-691 601.**
 - 8. MOHANAN NAIR,
PARAGHOOR HOUSE, ASRAMOM, KOLLAM DISTRICT-691 001.**
 - 9. SASEENDRA BABU,
349/13, MUNDAKKAL, KOLLAM-691 010.**
 - 10. M.G.RAJMOHAN,
MANGALATHU VEEDU, THEVELAKARA, KOLLAM-690 524.**
 - 11. C.P.KUNJUNNI PILLAI,
S/O.VELAYUDHAN PILLAI, MANAGING TRUSTEE
VIDHYADHIRAJA CHARITABLE MEDICAL TRUST, ANCHALUMMOODU
KOLLAM(DIED)-691 001.**
 - 12. DR.AMMINI THAMPI,
W/O.MAHENDRAN THAMPI, SREESANKARA BHAVAN, MURUNTHAL
TRIKKADAVOOR, PIN-691 001.
44/PENLIGNTON COVET, CHASHIRE, U.K.**
- R2 & R3 BY ADV. SRI.V.V.RAJA
R5 BY ADVS. SRI.V.JAYAPRADEEP
SRI.SHANE WILFRED MORRIS
R9 BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
04-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

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C.R.P.No.544 of 2014

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Dated this the 4th day of February, 2015

ORDER

P.N.Ravindran, J.

The petitioners are defendants 3 and 8 in O.S.No.63 of 1995 on the file of the Court of the Principal Subordinate Judge of Kollam. Respondents 1 to 3 are the plaintiffs and respondents 4 to 12 are defendants 1, 2, 4 to 7 and 9 to 11 respectively therein. O.S.No.63 of 1995 instituted by respondents 1 to 3 for mandatory and prohibitory injunctions and for damages for wrongful use and occupation of the plaint schedule hospital and movables therein, was decreed after trial by judgment delivered on 15.3.2008. By the said judgment, the trial court held that the plaintiffs are entitled to realise the sum of Rs.18,00,000/- as damages for wrongful use and occupation of the plaint A and B schedule properties from January 1993 till the date of handing over the key, with interest at 6% per annum from defendants 2 to 9 jointly and severally and from the assets of defendants 1 to 9. The decretal portion of the judgment in O.S.No.63 of 1995 reads as follows:-

"In the result, the suit stands decreed in part

allowing the plaintiffs to realize a sum of Rs.18,00,000/- as damages for the wrongful use and occupation of the plaint A and B schedule properties for 60 months from January, 1993 till the date of entrusting key with interest @ 6% p.a. from the date of handing over the key before court till realization from D2 to D9 jointly and severally and from the assets of D1 to D9, plaintiffs are also entitled to realize their costs from D2 to D9 jointly and severally and from the assets of D1 to D9 reliefs (a), (b) and (e) stand dismissed being infructuous."

2. The decree and judgment in O.S.No.63 of 1995 are under challenge in R.F.A.No.837 of 2008 filed by defendants 1 to 5, 7 and 8 in this Court. The said appeal has been admitted and is pending in this Court. On I.A.No.5197 of 2008 filed therein by the appellants, a Division Bench of this Court had by order passed on 4.12.2008 stayed the operation of the decree and judgment dated 15.3.2008 in O.S.No.63 of 1995, subject to the condition that the appellants shall furnish security for the decree debt to the satisfaction of the court below. It was also stipulated that it will be open to the appellants to offer the property attached before judgment as security in case the same is sufficient to meet the decree debt. The petitioners herein are appellants 3 and 7 in R.F.A.No.837 of 2008. The appellants did not furnish security within the stipulated time, with the result, the decree holders filed E.P.No.743 of 2010 to execute the decree by proceeding against the property attached before judgment. In the execution petition, the appellants raised a

contention that in view of section 11 of the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955 (hereinafter referred to as "the Act" for short), the decree is not executable against defendants 2 to 9. The execution court overruled the said contention by order passed on 10.7.2014. The said order is under challenge in the instant civil revision petition.

3. We heard Sri.N.Dharmadan, learned Senior Advocate appearing for the petitioners, Sri.Rajavijayaraghavan, learned counsel appearing for respondents 1 to 3, Sri.Jayapradeep, learned counsel appearing for the fifth respondent and Sri.C.Unnikrishnan (Kollam), learned counsel appearing for the ninth respondent. Sri.N.Dharmadan, learned Senior Advocate appearing for the petitioners contended relying on section 11 of the Act that in view of the stipulations therein, the decree in O.S.No.63 of 1995 cannot be executed against the petitioners and others who were joined as defendants 2 to 9 in this suit. The learned counsel contended that, as the decree in the instant case is against the person or officer named on behalf of the society, the decree holders cannot execute the decree by proceeding against the person or against the property of the petitioners namely defendants 2 to 9 in the suit. The learned Senior Advocate also placed reliance on the decisions of this Court in **Velayudha Kurup Vs. Dy. Tahsildar (RR)** (1994 (2) KLT 219)

and in **Varghese Vs. Bhanuvikraman Unnithan** (2007 (2) KLT 595) in support of his contention. Sri.Jayapradeep and Sri.C.Unnikrishnan (Kollam), learned counsel appearing for respondents 5 and 9 reiterated the aforesaid submissions.

4. Per contra, Sri.Rajavijayaraghavan, learned counsel appearing for respondents 1 to 3 invited our attention to the decretal portion of the judgment and contended that the decree in the suit is not merely one against the society acting through its officers but against its office bearers/members as well, that the decree is joint and several and therefore, section 11 cannot have any application. The learned counsel also contended that, even in the decisions relied on by the learned counsel for the petitioners it has been held that the application of section 11 is restricted to decree passed against the person or officer named on behalf of the society, that it has no application in the instant case as the decree is not against a person or officer named on behalf of the society, but the decree is against the society and its office bearers jointly and severally and therefore, the impugned order does not merit interference.

5. We have considered the submissions made at the Bar. We have also gone through the pleadings and materials on record. Section 11 of the Act reads as follows:-

"Enforcement of decree against society:- If a decree is against the person or officer named on behalf of the society, such decree shall not be executed against the property, movable or immovable, or against the body of such person or officer, but against the property of the society."

6. Interpreting section 11, in **Velayudha Kurup Vs. Dy. Tahsildar (RR)** [supra] a Division Bench of this Court held that the section intends to protect office bearers from being proceeded against in respect of amounts due from the society, as a separate entity. It was held that section 11 had no application as the office bearers had entered into a separate bond with the Khadi Board on their own volition, thereby making themselves liable and having made themselves liable, it is not open for them to resort to section 11 of the Act. The very same view was reiterated by this Court in **Varghese Vs. Bhanuvikraman Unnithan** [supra] wherein it was held that section 11 of Act XII of 1955 only bars the execution of a decree against the society by proceeding against the property or person of the officers of the society, the reason being that the decree is against the society and the officers represented by the society in the litigation. It was held that in such a case, the liability under the decree is that of the society and not of its officers. In the instant case, a mere reading of the decretal portion of the judgment discloses that the decree is joint and several. Under the

decree, defendants 2 to 9 who are officers of the first defendant society are also liable personally. In such circumstances, as the decree is not one against the society represented by the officers, the petitioners cannot in our opinion place reliance on section 11 of the Act to contend that the decree cannot be executed against defendants 2 to 9. Such a stand can be taken by them only if the decree and judgment of the trial court are modified by this Court in appeal and a decree is passed only against the first defendant society represented by its president namely the second defendant in the suit.

We therefore find no grounds to interfere with the impugned order. The civil revision petition fails and it is accordingly dismissed. No costs.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
ANIL K.NARENDRA
JUDGE

vpv/skj