

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

CRP.No. 616 of 2014 ()

(AGAINST ORDER DATED 01.10.2014 IN EP NO.208/2014 IN
O.S.NO.353/2011 ON THE FILE OF SUB COURT KOZHIKODE)

REVISION PETITIONER(S)/RESPONDENT/JUDGMENT DEBTOR:

C.K.PRAKASAN AGED 46 YEARS
S/O.GOPALAN, PUNATHIL MEETHAL
P.O.VELLIPARAMBA KOZHIKODE- 673 008

BY ADV. SRI.P.S.SREEDHARAN PILLAI

RESPONDENT(S)/DECREE HOLDER/PETITIONER:

VIJAYA BANK,
EAST NADAKKAVU, KOZHIKODE-673 011
PRINCIPAL OFFICER & MANAGER, S.MURALEEDHARAN SHENOY
EAST NADAKKAVU, KOZHIKODE- 673 001

R1 BY ADV. SRI.K.ANAND (SR.)
R1 BY ADV. SMT.LATHA KRISHNAN,SC, VIJAYA BANK

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 14-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

jg-19/1

THOTTATHIL B.RADHAKRISHNAN, J.

CRP No.616 of 2014

Dated this the 14th day of December, 2015

O R D E R

1. Heard the learned counsel for the revision petitioner and the learned standing counsel for the respondent.
2. One of the judgment debtors under a decree for recovery of money is the revision petitioner. The respondent decree holder, a Bank, took the decree in execution and sought personal execution as against the revision petitioner, who is one among the two judgment debtors. It is stated that he was the guarantor for the transaction. There is no other security for the loan extended, it is submitted.
3. After filing counter affidavit to the application for execution, the revision petitioner filed yet another additional counter affidavit with an application seeking that the said additional counter affidavit may be received. That carried the definite plea that the

revision petitioner has no means to satisfy the decree. The application for reception of the additional counter affidavit was dismissed by the executing court on the ground that it is only a dilatory tactics. Having dismissed that, the execution petition was taken up and ordered for further steps for detention of the revision petitioner in civil prison. Perusing that order, it can be seen that the decree holder had not tendered any material to show that the revision petitioner had the means to pay. When a plea of no means is taken by a judgment debtor in opposition to an application for personal execution, the Court has to enquire on that issue and personal execution will follow only on being satisfied that the judgment debtor is willfully evading payment in spite of having the means to pay. The initial burden of proof in this regard is on the decree holder. It is also a settled law that an order for personal execution will not be issued even if a counter affidavit is not filed; unless the court is satisfied through the evidence produced by the decree holder that the judgment debtor against whom personal execution is sought for has the means to

pay and is willfully evading payment.

4. Looking at the impugned orders and also taking a cue from the order dated 17.10.2014 minuted by this Court at the stage of admission, this is an eminently fit case where the court below has to conduct an enquiry on the question of the means of the revision petitioner to decide as to whether personal execution could be proceeded with as against him. In the impugned order, the court below has failed to exercise the jurisdiction vested in it and has acted in the exercise of its jurisdiction illegally and with material irregularity.

In the result, the impugned orders are set aside and EA No.650 of 2014 in EP No.208 of 2014 in OS No.353/2011 is allowed and, consequentially, the court below will take up EP No.208 of 2014 and decide on it afresh after affording the decree holder and the judgment debtor/revision petitioner an opportunity of hearing and to adduce evidence, including by personal evidence. Parties

are directed to mark appearance before the court below on
22.01.2016.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

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