

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. 618 of 2014 ()

**AGAINST THE ORDER/JUDGMENT IN OS 72/2012 of MUNSIFF COURT, QUILANDY
DATED 17.09.2014**

REVISION PETITIONER/RESPONDENT/DEFENDANT NO.1:

**PEROOLIKKUNNUMMEL SIRAJ, AGED 31 YEARS,
S/O.KOYAKUTTY, BUSINESS, ULLIYERI AMSOM DESOM,
KOYILANDY TALUK, KOZHIKODE DIST.**

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT/PETITIONER/DECREE HOLDER:

**ELAMBILASSERY KOUSU, AGED 70 YEARS,
@ KAUSALYA, W/O.VIJAYAN, SWASTHAM,
OTTAKKANDATHIL HOUSE, ELATHUR AMSOM DESOM,
KOZHIKODE TALUK, KOZHIKODE DIST-673 001.**

**R BY ADVS. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW
SRI.M.D.SASIKUMARAN
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES**

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

DG

THOTTATHIL B.RADHAKRISHNAN,J.

C.R.P.No.618 of 2014

Dated this the 14th day of December, 2015

O R D E R

1. Heard.
2. This revision petition is against an order by which the court below has ordered personal execution by arrest and detention of the revision petitioner in Civil Prison for one month and has also ordered attachment of his properties.
3. The revision petitioner is the 1st defendant and hence the 1st judgment debtor covered by a decree of perpetual injunction against, among other things, demolition of a wall which the plaintiff was constructing. Revision petitioner stood ex parte in the suit. The injunction order was served directly to him, yet he did not appear. In execution proceedings the notice was served on an adult member of the family of the petitioner, since the revision petitioner was not available at home. That

was received by his wife. Yet, he did not contest the execution proceedings.

4. The allegation in the execution petition is that in violation of the decree of perpetual injunction, the revision petitioner who is the 1st judgment debtor and others demolished the wall under construction and abused the decree holder, her husband and son using filthy language when they went over to complete the construction. The constructed portion was also pulled down, it was alleged. The decree holder tendered evidence in execution. She spoke in support of the allegations raised by her in the execution petition. The learned Munsiff appreciated such materials and drew the necessary inferences and held that the ad interim order of temporary injunction was received by the revision petitioner on 09.04.2012. But, he did not respond by appearing before the court below. On 27.03.2013 the decree was passed restraining, among other things, any obstruction to the construction of the compound wall. Notice was served, as noted above, through the wife of the revision petitioner. The court below relied on and accepted the version of PW1 Kousalya who is the decree holder, who spoke that the

respondent along with Shoukath and Noufal trespassed and obstructed the construction of the compound wall. Motor vehicles were driven by the respondent through the plaint schedule property and with the aid of JCB the decree holder's property was dismantled. All such evidences remain unchallenged. The learned Munsiff, on the basis of such materials held that nobody shall be permitted to hide behind the curtain and thwart the judicial orders and that when an act is done in violation of an order or injunction continuation of such wrong doing has to be prevented. The learned Munsiff rightly noted that any attempt to thwart the process of court has to be viewed seriously and when a decree of injunction is violated, that has to be visited and dealt with sternly and seriously, otherwise it will undermine the very basis of Rule of Law.

5. The learned counsel for the revision petitioner argued that the decree itself was ex parte and that applications are pending to have that ex parte decree set aside. He further pointed out that the execution proceedings were also ex parte and applications have been filed before the court below to vacate

the ex parte orders. The mere fact that a particular order is ex parte does not in any manner impair its binding nature and legal effect. An ex parte decree is a decree which has all bigger and an ex parte execution proceedings will also carry with it all legal consequences, though those proceedings could be withdrawn by the course on appropriate applications with requisite grounds and reasons. That does not in any manner mean that when ex parte orders or proceedings are in force, the person bound by those decrees and orders can violate them and yet plead against enforcement of measures which arise out of such violations.

6. The learned counsel for the revision petitioner further argued that the evidence of the decree holder as PW1 could not have been accepted by the court below without any corroborating material including evidence of other witnesses. The fact that the decree continues to stand taken along with the inculcating circumstances as inferred by the court below cannot be ignored. At the same time, I am of the view that this is an eminently fit case where the pendency of the applications to set aside the ex parte decree and the ex parte execution

proceedings can be taken note of to give the revision petitioner/1st judgment debtor a further opportunity of being heard before the executing court, however, on terms which would befit the circumstances for not having contested the execution proceedings. I hasten to add that this observation during the course of discussion in this judgment is not in relation to the ex parte decree and is confined only to the ex parte execution proceedings.

7. In the result, the impugned order is set aside and the revision petitioner/1st judgment debtor is given an opportunity to place objections to the execution petition and any execution application therein and context that matter on condition that he pays the respondent decree holder an amount of ₹25,000/- as costs payable by way of Demand Draft in her favour and payable by production before the court below within a period of four weeks from today without fail. Time limit fixed hereby for compliance of such condition shall be treated as peremptory. If such condition is satisfied, the impugned order will stand set aside and the court below will proceed with the execution proceedings in the light of what is stated above. If

such condition is not complied with the execution court will post the matter for further steps immediately in terms of the order impugned here. Parties are directed to mark appearance before the court below on 15.01.2016.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG