

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

FAO.No. 284 of 2014 ()

**EA NO. 170/2005 AND EA NO. 787/2005 IN EP NO.125/2001 IN OS NO. 283/1988
OF SUB COURT, KOZHIKODE**

APPELLANT :

**A.P AMINA
D/O.A.P.UMMER, AGED 65 YEARS
2/2157-B FAUAR, ANAMIKA STREET
POST CIVIL STATION, KOZHIKODE DISTRICT-673020.**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S) :

- 1. MRS. REMA HARIDAS
WIFE OF HARIDAS, AGED 52 YEARS
NEDUNGOTTUR AMSOM DESOM
KOZHIKODE-673305.**
- 2. P.SIVADASAN,
SON OF THAMARASSERY AYYAPPAN,
VENGERI VILLAGE, NEDUNGOTTUR DESOM,
KOZHIKODE DISTRICT-673305.**

**THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

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F.A.O.No.284 of 2014.

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Dated this the 21st day of December, 2015.

J U D G M E N T

The appeal is preferred challenging the orders on E.A.Nos.170 & 787 of 2005 in E.P.No.125 of 2001 in O.S.No.283 of 1988 on the file of the Sub Court, Kozhikode. E.P.No.125 of 2001 was filed to execute the money decree in O.S.No.283 of 1988. There was an order of attachment before judgment on 3.10.1988 in O.S.No.283 of 1988. The appellant is the purchaser of the attached property. According to her, the property which was originally owned by the defendant in the suit was sold by him on 13.4.1988 to the predecessor of the appellant and she purchased the property from him pending suit, on 4.8.2000. It is alleged by the appellant that she was not aware of the order of

attachment and when she came to know of the order of attachment, she filed E.A.No.170 of 2005 invoking Rule 58 of Order XXI of the Code of Civil Procedure seeking orders to hold that the property was not liable to be proceeded against in execution of the decree. E.A.No.170 of 2005 was dismissed for default on 23.7.2005. On the very same day, the appellant filed E.A.No.787 of 2005 seeking orders to restore E.A.No.170 of 2005. It is seen that E.A.No.787 of 2005 was dismissed by the execution court for the reason that only the counsel for the appellant has filed an affidavit in support of the said application. The appellant, thereupon filed a fresh application as E.A.No.1307 of 2005 seeking the reliefs sought in E.A.No.170 of 2005. E.A.No.1307 of 2005 was though allowed by the execution court, the decision therein was reversed by this Court as per the judgment dated 6.1.2014 in R.F.A.No.477 of 2010, holding that the remedy of the appellant was to challenge the order in E.A.No.170 of 2005 as also in E.A.No.787 of 2005. The

present appeal has been filed thereupon, challenging the said orders.

2. As noticed above, E.A.No.170 of 2005 was dismissed for default on 23.7.2005 and on the very same day, the appellant filed E.A.No.787 of 2005 seeking orders to restore E.A.No.170 of 2005. The execution court dismissed E.A.No.787 of 2005 on the ground that the appellant has not filed any affidavit in support of the application. True, the affidavit in support of the said application was filed by the counsel for the appellant. It is now settled that when applications are filed in court in relation to matters over which the counsel has personal knowledge, the counsel engaged by the party is competent to file affidavits in support of the applications. (See **Glob Chits and Financiers v. Nediyoath Kunhimoideenkutty** (2014 (4) KHC 321). In the light of the said decision of this Court, the order passed by the court below in E.A.No.787 of 2005 is unsustainable.

In the result, the appeal is allowed, the impugned orders are set aside and E.A.No.170 of 2005 on the file of the Sub Court, Kozhikode is restored to file. All the interlocutory applications in the appeal are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.