

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

OP(C).No. 41 of 2015 (O)

OS.NO. 487/2010 OF III ADDL.SUB COURT, KOZHIKODE

PETITIONER :

MINI,
AGED 34 YEARS, D/O.NEELAKANDAN
RESIDING AT KOMMENDERI HOUSE
NELLOLIPADANNA, CHERUVANNUR AMSOM DESOM
KOZHIKODE TALUK.

BY ADV. SRI. P.V. KUNHIKRISHNAN

RESPONDENT :

PARAKKATTIL MOHANAN, AGED 55 YEARS
S/O.GOPALAN, PUTHIYANGADI VILLAGE
EDAKKAD DESOM, KOZHIKODE TALUK
REPRESENTED BY THE POWER OF ATTORNEY RATHEESH
S/O.RAVI, MALARVADI HOUSE, KAKKULANGARA PARA
P.O. EDAKKAD, KOZHIKODE - 673 005

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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...2/-

OP(C).No. 41 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 - TRUE COPY OF THE JUDGMENT DATED 28-1-2011 IN OS NO.487/2010 ON THE FILE OF THE SUBORDINATE JUDGE OF KOZHIKODE.
- EXT.P2 - TRUE COPY OF THE PETITION DATED 18-8-2014 FILED TO SET ASIDE THE EX-PARTE DECREE IN OS NO.487/2010 WHICH IS NOW PENDING AS IA NO.3240/2014.
- EXT.P3 - TRUE COPY OF THE PETITION DATED 18-8-2014 FILED TO CONDONE THE DELAY IN FILING THE PETITION TO SET ASIDE THE EX-PARTE DECREE IN OS NO.487/2010 WHICH IS NOW PENDING AS IA NO.3239/2014.
- EXT.P4 - TRUE COPY OF THE COUNTER DATED 30-09-2014 FILED BY THE RESPONDENT IN EXT.P2 PETITION.
- EXT.P5 - TRUE COPY OF THE COUNTER DATED 30-9-2014 FILED BY THE RESPONDENT IN EXT.P3 PETITION.
- EXT.P6 - TRUE COPY OF THE JUDGMENT DATED 02-12-2014 IN OPC NO.2848/2014.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

P. BHAVADASAN, J.

O.P.(C). No. 41 of 2015

Dated this the 8th day of January, 2015.

JUDGMENT

The limited prayer in this petition is for a direction to the IIIrd Additional Sub Court, Kozhikode to take up and dispose of Exts. P2 and P3 petitions which are filed for setting aside the ex parte decree and also for condonation of delay in filing the application for setting aside the ex parte decree and till then to keep the execution proceedings in abeyance.

2. The petitioner is the defendant in a suit for specific performance. Ex parte decree was passed against her. She moved Exts.P2 and P3 petitions, namely, I.A. 3240 of 2014 and I.A. 3239 of 2014 in O.S. 487 of 2010, on 18.8.2014 for setting aside the ex parte decree and to condone the delay in filing the petition to set aside the ex parte decree. It is pointed out that counter affidavit has been filed on 3.9.2014

and ever since then the matter is being adjourned under one pretext or another. In the meanwhile, execution proceedings are being taken in a haste by the decree holder and the case stands posted for delivery of the property.

3. The petitioner had approached this Court on an earlier occasion by pointing out that she had moved a stay petition before the execution court and this Court disposed of that Original Petition with a direction to the execution court to take up the said petition and dispose it of on merits. The petitioner now submits that the stay petition has been dismissed and execution proceedings are going on. It is further pointed out that if before the consideration of Exts. P2 and P3 petitions, delivery is ordered, the petitioner will be put to irreparable loss and injury.

4. There seems to be some force in the above submission.

5. In the nature of the order that is proposed to be passed in this petition, it is felt that notice to the respondent appears to be unnecessary.

This Original Petition is disposed of directing the IIIrd Additional Sub Court, Kozhikode to take the two interlocutory applications already made mention of and dispose of those applications as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. Till then, the execution proceedings shall be kept in abeyance.

P. BHAVADASAN,
JUDGE

sb.