

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 20TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

OP(C).No. 414 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN OS 64/2015 of MUNSIF COURT, ERNAKULAM.

PETITIONER(S):

**JITHIN BABU, AGED 29 YEARS,
S/O LATE M.M BABU, PROPRIETOR,
NATIONAL SAW MILL & WOOD INDUSTRIES,
35/3026, M.K.V ROAD, PALARIVATTOM, KOCHI - 682 025.
RESIDING AT MARAYAKULATH HOUSE, M.K.V ROAD,
PALARIVATTOM, ERNAKULAM DISTRICT, KOCHI - 682 025.**

**BY ADVS.SRI.N.SUBRAMANIAM.
SRI.M.S.NARAYANAN.
SRI.P.T.GIRIJAN.
SMT.USHA NARAYANAN.**

RESPONDENT(S):

- 1. RASHEED V.P, AGED ABOUT 57 YEARS,
S/O PAREED KHAN, PROPRIETORY CONCERN,
E-ORIENTAL TIMBERS, N.H.BYE PASS, OPP. CHAITHANYA MARBLES,
EDAPPALLY, ERNAKULAM DISTRICT, KOCHI - 682 024.**
- 2. M/S.SOUTH INDIAN BANK LTD., THAMMANAM BRANCH,
KOCHI - 682 032, POONITHURA VILLAGE,
KANAYANNUR TAKUK, ERNAKULAM DISTRICT.**
- 3. M/S.TAMIL NADU MERCANTILE BANK,
NEAR SUDHEENDRA HOSPITAL, KACHERIPADY,
CHITTOOR ROAD, ERNAKULAM DISTRICT, KOCHI - 682 018.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 20-02-2015, ALONG
WITH O.P(c) NO.416 OF 2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :

- EXHIBIT P1 : TRUE COPY OF THE PROFORMA INVOICE DATED 31-07-2014.**
- EXHIBIT P2 : TRUE COPY OF ILC NO.0447000022014 DATED 24-09-2014.**
- EXHIBIT P3 : TRUE COPY OF the PLAINT DATED 11-01-2015 IN O.S NO.64/2015 OF THE MUNSIFF COURT, ERNAKULAM.**
- EXHIBIT P4 : TRUE COPY OF THE INJUNCTION APPLICATION DATED 11-01-2015 IN I.A NO.39/2015 IN O.S NO.64/2015 OF THE MUNSIFF COURT, ERNAKULAM.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A TO JUDGE

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A.HARIPRASAD, J.

O.P (C) Nos.414 & 416 of 2015

Dated this the 20th day of February, 2015.

COMMON JUDGMENT

Heard the learned counsel for the petitioners. Since the questions arising in both these matters are similar in nature, they are heard together and disposed by this common judgment.

2. The petitioners are doing business in timber. First respondent is also a dealer in timber, who imports timber and sells it to timber merchants like the petitioners. Second respondent is the banker of the petitioner and the third respondent is the banker of the first respondent.

3. The first respondent caused timber to be brought from Myanmar and it was kept in the premises of his agent. The petitioners entered into separate agreements with the first respondent to purchase timber. As per the terms of the agreement, the petitioners and the first respondent agreed to have monetary transactions by way of Inland Letter of Credit

(ILC) of 180 days validity, so as to safeguard the interest of both the parties. The petitioners also agreed to pay interest for a period of 180 days. Second respondent drew up ILCs of different dates and for different amounts. Two of the ILCs became due on 05-01-2015. Later, the petitioners came to know that the first respondent is not in a position to honour the commitments made to supply timber to the petitioners. Till 05-01-2015, there was short supply in timber by the first respondent which caused loss to the petitioners. The petitioners informed the second respondent bank that materials agreed to be supplied had not been supplied and they requested the second respondent not to honour ILCs without supply of the entire materials. The second respondent informed the petitioners that as per banking practices and directions issued by the Reserve Bank of India when documents mentioned in the ILCs are submitted by the other banker, the second respondent is bound

to honour the ILCs and release the amount. In these circumstances, the petitioners approached the court below with a suit for injunction restraining the respondents from encashing the remaining portion of the ILCs.

4. Learned counsel for the petitioners submitted that before the court below the respondents had entered appearance and filed counter affidavit for which reply affidavit was also filed. Some of the ILCs in these cases will be maturing on 24-02-2015. According to the learned counsel for the petitioners, if the ILCs are happened to be encashed on that date, they will suffer irreparable loss and injury and the suit will become infructuous. Therefore, the request of the petitioners is to direct the court below to expedite hearing of the matter and till then an interim order of restraining the respondents from encashing the ILCs.

5. Heard the learned counsel appearing for the

petitioners and respondents 1 and 3. Learned counsel for the 3rd respondent submitted that the 3rd respondent will suffer if an adverse order is passed without hearing them on merit. Considering the fact that the petitions are ripe for hearing as all steps have been taken, the learned Munsiff shall dispose of the matter on or before 24.02.2015. No further direction is required in this matter.

In the result, both the original petitions are disposed of. The lower court is directed to dispose of I.A.No.369 of 2015 in O.S.No.64 of 2015 and I.A.No.543 of 2015 in O.S.No.77 of 2015 on or before 24.02.2015, untrammelled by any of the observations contained in this judgment.

Sd/-
A.HARIPRASAD,
JUDGE.

//True copy//

PA to Judge