

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

OP(C).No. 436 of 2015 (O)

(O.S.4/2015 OF PRINCIPAL SUB COURT, KOLLAM)

PETITIONER/DEFENDANT:

VIVA TRUST, RAJAGIRI,
SASTHAMCOTTA, REPRESENTED BY ITS CHAIRMAN CUM MANAGING
TRUSTEE REV.FR. DR.G.ABRAHAM THALOTHIL, RAJAGIRI,
SASTHAMCOTTA, KOLLAM DISTRICT.

BY ADVS.SRI.ALEX N.MATHEW (KOLLAM)
SRI.H.RAMANAN

RESPONDENT/PLAINTIFF:

M/S.FINE FOUNDATIONS PRIVATE LIMITED
SREEKARYAM, THIRUVANANTHAPURAM
REPRESENTED BY ITS MANAGING DIRECTOR EASO KURIAN
S/O.UNNUNNI, RESIDING AT GRA-K-41, GANDHIPURAM
SREEKARYAM P.O. THIRUVANANTHAPURAM, PIN-695 017

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 436 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF PLAINT DT.16-04-14 IN OS 36/14 OF SUB COURT,
KARUNAGAPPALLY.

EXT.P2 - TRUE COPY OF WRITTEN STATEMENT CUM COUNTER CLAIM IN
OS 36/14 OF SUB COURT KARUNAGAPPALLY DTD.25.7.14.

EXT.P3 - TRUE COPY OF COMMISSION APPLICATION IA 848/14 IN OS 36/14
OF THE SUB COURT, KARUNAGAPPALLY DT.16-8-14.

EXT.P4 - TRUE COPY OF WRITTEN OBJECTION IN IA 848/14 IN OS 36/14 OF
THE SUB COURT, KARUNAGAPPALLY DT.16-09-14.

EXT.P5 - TRUE COPY OF POSTING ADVANCE APPLICATION IA NO.113/2015
IN OS 4/15 OF THE SUB COURT, KOLLAM DT.17-01-15.

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.436 OF 2015

Dated this the 18th day of February, 2015.

J U D G M E N T

The petitioner in this original petition was the defendant in the suit who raised a counter claim and he wanted to have a Commissioner appointed to ascertain certain matters. In order to substantiate his claim in the counter claim, he moved Ext.P3 commission application.

2. The grievance is that no orders have been passed on Ext.P3 petition. Even though the petitioner had filed an advance petition for hearing of the same, that was dismissed. The petitioner points out that he will be put to considerable loss and injury unless Ext.P3 i.e. I.A.No.378/2015 is taken up and an order is passed on merits before the suit is listed for trial.

3. Learned counsel appearing for the petitioner pointed out that the matters which have to be ascertained by the Commissioner are essential matters for taking a decision in the light of the plea raised by the petitioner and therefore there may

be a direction to the court below to pass orders on Ext.P3.

4. In the nature of the order that is proposed to be passed, it is felt that notice to the respondent is unnecessary.

This original petition is disposed of directing the court below to take up I.A.No.378/2015 in O.S.No.4/2015 and dispose of the same in accordance with law, after hearing both sides, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

P.BHAVADASAN
JUDGE

smp