

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYASHTA, 1937

OP(C).No. 516 of 2015 (O)

E.P. NO. 167/2014 IN OS NO. 235/2001 OF THE SUB COURT, MANJERI

PETITIONERS :

1. K.T.MUHAMMED KUTTY,
S/O. KUTTOOSA, KUNNATHODI HOUSE, OORAKAM.P.O.,
KEEZHMURI, VENGARA, MALAPPURAM DISTRICT.
2. K.T.ABDUL MAJEED,
S/O. K.T. MUHAMMEDKUTTY, KUNNATHODI HOUSE,
OORAKAM.P.O.KEEZHMURI, VENGARA, MALAPPURAM DISTRICT.
3. N.K.UMMER,
S/O. ALAVI, NAMBANUNNATH HOUSE, VENGARA.P.O.
MALAPPURAM DISTRICT.
4. M.KOMUKUTTY,
S/O.MAMMED, THADATHIL HOUSE, PARAPOOR ROAD,
VENGARA, MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SRI.K.RAKESH

RESPONDENTS :

M/S.SHAKTHI FINANCE LIMITED,
NO.475, DR. NANJAPPA ROAD, P.B.NO.3745,
COIMBATORE, REPRESENTED BY ITS GENERAL MANAGER
PIN - 641 009.

BY ADV. SRI.DEVAPRASANTH.P.J.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

OP(C).No. 516 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE EXECUTION PETITION FILED BY THE
RESPONDENT DATED 1-8-2014 AS E.P.NO.167/2014.

EXT.P2: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS TO THE
EXECUTION PETITION, DATED 13-10-2014.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B. KEMAL PASHA, J.

.....
O.P.(C) No.516 of 2015
.....

Dated this the 8th day of June, 2015

J U D G M E N T

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A suit for money was filed by the respondent against the petitioners herein as OS.235/2001. The suit was decreed. Execution Petition was filed through EP.167/2014. It seems that the court below has passed the following order on 09.02.2015:-

“ Petition filed under Order 21 Rule 37 of Code of Civil Procedure. Judgment Debtor absent. No payment. Issue arrest warrant - 10.03.2015.”

2. It seems that there is gross violation of the provisions contained in Section 55 and Order XXI Rule 37 of the CPC, 1908 in this matter. The court below has not followed the procedure contemplated under law for issuing a warrant. It seems that the means of the judgment-debtor has not been proved. Even when the judgment-debtor is

present or not, the decree-holder has a duty to prove the means of the judgment-debtor to pay the decree amount in lump. Apart from all these, it seems that the impugned order is not a speaking order. The court below is not expected to pass such orders, in a casual manner. The impugned order is, therefore, liable to be set aside.

In the result, this OP(Civil) is allowed and the impugned order is set aside. The court below shall decide the matter afresh, in accordance with law.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/08/06

// True Copy //

PA to Judge