

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(C) .No. 534 of 2015 (O)

IN OS 4/2011 of ADDITIONAL DISTRICT COURT, KOZHIKODE- II

PETITIONER(S) :

MOHANAN T. ,
AGED 46 YEARS, S/O. GOPALA KURUP,
ROOM NO.17/1412 A, MEESAKARAN BUILDING,
M.M.ALI ROAD,
KOZHIKODE-673 004.

BY ADVS.SRI.VINOD SINGH CHERIYAN
SRI.R.SUDHISH
SMT.M.MANJU.

RESPONDENT(S) :

R.BHASKAR,
AGED 48 YEARS, S/O.A.RAMU,
PROPRIETOR, M/S.CITY TRAVELS, 61,
SIVASAMY ROAD, RAMNAGAR,
COIMBATORE-641 009.

BY ADV. SRI.P.V.KUNHIKRISHNAN.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: COPY OF THE PLAINT IN O.S. NO.4 OF 2011 ON THE FILE OF THE DISTRICT COURT, KOZHIKODE DATED 23.3.2011.
- EXT.P2: COPY OF THE ORDER IN E.P. NO.411 OF 2014 IN O.S. NO.4 OF 2011 OF THE IIND ADDITIONAL DISTRICT COURT, KOZHIKODE DATED 15.1.2015.
- EXT.P3: COPY OF THE AFFIDAVIT WITH PETITION IN I.A.NO.354 OF 2015 IN O.S. NO.4 OF 2011 FILED BEFORE THE IIND ADDITIONAL DISTRICT COURT DATED 23.2.2015.
- EXT.P4: COPY OF THE I.A. NO.353 OF 2015 IN O.S. NO.4 OF 2011 FILED BEFORE THE IIND ADDITIONAL DISTRICT COURT DATED 23.2.2015.
- EXT.P5: COPY OF THE STAY PETITION I.A.NO.355 OF 2015 IN O.S.NO.4 OF 2011 FILED BEFORE THE IIND ADDITIONAL DISTRICT COURT DATED 23.2.2015.
- EXT.P6: COPY OF THE E.A. NO.150 OF 2015 IN E.P.NO.411 OF 2014 DATED 23.2.2015 FILED BEFORE THE IIND ADDITIONAL DISTRICT COURT DATED 23.2.2015.
- EXT.P7: COPY OF THE APPLICATION E.A.NO.151 OF 2015 IN E.P. NO.411 OF 2014 FILED BEFORE THE IIND ADDITIONAL DISTRICT COURT DATED 23.2.2015.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

B. KEMAL PASHA, J.

.....
O.P.(C) No.534 of 2015
.....

Dated this the 28th day of May, 2015

J U D G M E N T

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An ex-parte decree was passed in OS.4/2011 of the II Additional District Court, Kozhikode. The question is relating to infringement of trademark. According to the petitioner, who is the judgment-debtor, he was advised that there was no chance of a decree against him as the trademark that was being used by him was allegedly totally different from the trademark that was being claimed by the plaintiff in the suit. Ultimately, it so happened that a decree was passed. The decree was put in execution and the execution proceedings are going on. In execution of the decree, the petitioner was ordered to be arrested and detained in civil prison through Ext.P2 order. In the

meantime, it seems that the petitioner had approached the court below with Exts.P3, P4 and P5 IAs. Ext.P3 application is one for getting the ex-parte decree set aside, Ext.P4 is one for getting the delay condoned, and Ext.P5 is one for getting the execution proceedings stayed. The limited request is that the court below may be directed to dispose of Exts.P3, P4 and P5 before executing the decree as ordered in Ext.P2.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. On hearing either side and on perusing the records, this Court is of the view that in the interest of justice, Exts.P3, P4 and P5 have to be decided prior to the enforcement of Ext.P2 order in execution.

4. In the result, the court below is directed to dispose of Exts.P3, P4 and P5 IAs, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. Of course, it is

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made clear that the respondent should be given a chance to file counter. Both sides shall be heard. Till the disposal of Exts.P3, P4 and P5 IAs, the execution proceedings shall stand stayed.

OP(Civil) is disposed of as above.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/28/05

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PA to Judge