

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

OP(C).No. 542 of 2015 (O)

E.P. NO. 8/2013 IN O.S. NO.59 OF 2006
OF MUNSIF COURT, DEVIKULAM, IDUKKI DISTRICT.

PETITIONER(S)/JUDGMENT DEBTOR/PLAINTIFF:

M.SARAVANAKUMAR, AGED 39 YEARS,
S/O. T. MURUGIAH, RESIDING AT
MGP XVI/683 (PRESENTLY XIX/437),
NADAYAR SOUTH DIVISION,
NALLATHANNI ESTATE, KDH VILLAGE.

BY ADVS.SRI.PRAVEEN K. JOY
SRI.T.A.JOY

RESPONDENT(S)/DECREE HOLDER/DEFENDANT NO.2:

M/S. TATA TEA LTD.,
MUNNAR, REP. BY ITS GENERAL MANAGER,
MUNNAR, KDH VILLAGE.

BY SRI.V.ABRAHAM MARKOSE

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OPC. 542 OF 2015

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : TRUE PHOTOCOPY OF THE EXECUTION PETITION IN
E.P. NO. 8/2013 ION O.S. 59/06 OF MUNSIFF'S COURT,
DEVIKULAM.

EXT. P2 : TRUE COPY OF THE OBJECTION IN E.P. 8/2013
BEFORE MUNSIFF'S COURT, DEVIKULAM.

EXT. P3 : TRUE COPY OF RECEIPT OF TATA GLOBAL BEVERAGES
LTD. DATED 11.4.2014.

EXT. P4 : TRUE COPY OF THE APPLICATION IN E.A. NO. 16/15
IN E.P. 8/13 IN O.S. 59/06 OF MUNSIFF'S COURT, DEVIKULAM.

P.BHAVADASAN, J.

O.P.(C) No.542 of 2015

Dated this the 27th day of February, 2015

J U D G M E N T

Sri. V. Abraham Markos takes notice on behalf of the respondent.

2. In a suit filed by the petitioner herein, a counter claim was filed by the respondent herein for recovery of possession on the strength of title. The suit was dismissed and the counter claim was decreed. The decree obtained in counter claim was put in execution and petitioner says that he had engaged a counsel to appear for him in the execution proceedings and entrusted all papers to him. He bonafide remained under the believe that the counsel would appear and contest for him. He was surprised to see the Amin in his property for effecting delivery and then he realized that his counsel neither appeared in the execution proceedings nor filed any objection. He engaged another counsel and had filed objection in the petition. The petitioner would say that

there is no willful laches or negligence on the part of the petitioner in not filing the objection in time and it happened under the circumstances mentioned above. The petitioner points out that unless his objections are heard and disposed of, it will cause irreparable loss and injuries to him.

3. The learned counsel appearing for the respondent pointed out that matter is posted for delivery of the property and it is too late in the day for the judgment debtor to contend that he has not been given an opportunity. There is no case for the judgment debtor according to the learned counsel for the respondent that notice has not been served in the execution proceedings. There is nothing to show that he can effectively resist the delivery.

4. Of course, it is difficult to believe the story put forward by the judgment debtor. But the fact remains that he has not been given an opportunity to have his objections heard and decided by the competent court. As to what defence he can have against the delivery is a matter to be

determined by the execution court. He has sworn to an affidavit in which he has stated that he had engaged a counsel to appear for him in the execution proceedings and to defend it. That need not be disbelieved.

5. Considering the nature of claim put forward before this Court, it is felt that it is only proper that the petitioner be given an opportunity to agitate his objections before the execution court.

In the result, this petition is disposed of directing the court below to dispose of Ext.P4 objection within a period of one month from today pending which delivery shall be kept in abeyance.

**P.BHAVADASAN
JUDGE**

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