

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

OP(C).No.598 of 2015 (O)

**(I.A NO.390/2013,IA NO.391/2013 IN O.S.NO.85/2010 AND E.A. NO.146/2014 IN E.P
NO.15/2011 IN O.S. NO.85/2010 OF THE SUBORDINATE JUDGE'S COURT,
KATTAPPANA.)**

PETITIONER:

**SARASAMMA,AGED 73 YEARS,W/O.PP.THAMPI,
GURUMANDIRAM HOUSE,ELAPPARA P.O,
ELAPPARA VILLAGE,PEERMEDU TALUK.**

**BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES**

RESPONDENT:

**GREEN PALACE RESORTS AND HOTELS (INDIA) PRIVATE LIMITED,
REP.BY ITS MANAGING DIRECTOR,
K.B.VIJAYAN,S/O.BHASKARAN,CHINNARKAVALA,
CHINNAR KARA,ELAPPARA VILLAGE,
PEERUMEDU TALUK-685501.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

OP(C).No.598 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1:TRUE COPY OF IA.NO.390 OF 2013 IN OS.NO.85 OF 2010
DATED 20.03.2013 OF THE SUBORDINATE JUDGE'S COURT,KATTAPPANA.**

**EXT.P2:TRUE COOPY OF IA.NO.391 OF 2013 IN OS.NO.85 OF 2010
DATED 20.03.2013 OF THE SUBORDINATE JUDGE'S COURT,KATTAPPANA**

**EXT.P3:TRUE COPY OF THE EA.NO.146 OF 2014 IN EP.NO.15 OF 2011 IN
OS.NO.85 OF 2010 DATED 09.10.2014 OF THE SUBORDINATE JUDGE'S
COURT.**

EXT.P4:TRUE COPY OF THE RECEIPT DATED 04.05.2009.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P. BHAVADASAN, J.

O.P.(C). No. 598 of 2015

Dated this the 5th day of March, 2015.

JUDGMENT

The petitioner's husband was the defendant in O.S. 85 of 2010 who suffered a decree for money. According to the petitioner, in fact her husband did not owe any amount to the plaintiff therein and the suit came to be decreed ex parte. Her husband is no more.

2. It is pointed out that the original defendant, i.e., the husband of the petitioner, had executed a mortgage in favour of the plaintiff Company in respect of 2.80 Ares of land. It is claimed that on 31.12.1999 the debt has been discharged and the then Managing Director of the Company had issued receipt of satisfaction of the debt. The present Managing Director had filed O.S. 114 of 2001 for realization of the amount for the same debt and on the filing of the written statement, the Company did not pay the balance court fee and the suit came to be dismissed. It was

thereafter the present suit has been filed and ex-parte decree obtained.

3. The petitioner came to know of the decree and has filed Exts.P1 and P2 petitions for setting aside the ex-parte decree and for condoning the delay in filing the petition to set aside the ex-parte decree. Counter affidavits have been filed in both those petitions and the matter has been pending for a long time. In the meanwhile, execution proceedings are taken by the decree holder and properties are being proceeded with and this causes considerable difficulties to the petitioner. It is prayed that the execution proceedings be deferred till the petitions filed by the petitioner are considered and disposed of on merits.

4. In the light of the submission made by the learned counsel for the petitioner and as could be discernible from the petition, the debt had been discharged and in the light of the fact that the petition to set aside the ex-parte decree and the petition to condone the delay in

filing the petition to set aside the ex-parte decree are pending consideration, it may not be just and proper to let the decree holder to proceed with the execution in the facts and circumstances of the case.

This Original Petition is disposed of directing Sub Court, Kattappana to take up Exts. P1 and P2 petitions and dispose them of on merits as expeditiously as possible, at any rate, within a period of one month from today. Till then, execution proceedings shall be kept in abeyance.

sb.

P. BHAVADASAN,
JUDGE