

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP(C).No. 799 of 2015 (O)

E.P.64/2014 IN OS 248/2010 OF ADDL.SUB COURT, NORTH PARAVUR.
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PETITIONER:

**PYARIJAN, W/O.ABDUL JAMAL,
AGED 50 YEARS,KAKSON HOUSE,
KANNANJAKKASSERI, PATTANAM MURI,
VADAKKEKKARA VILLAGE, PARAVUR TALUK.**

**BY ADVS.SRI.K.NARAYANAN (PARUR)
SRI.DEEPAK JOY.K.**

RESPONDENT:

**P.K.BABU, AGED 48 YEARS,
S/O.KARUNAN, PANIKKASSERY HOUSE,
VALIYAPAZHAMPILLY THURUTHIL,
VADAKKUPURAM MURI,
CHENNAMANGALAM VILLAGE, PARAVUR TALUK.**

BY ADV. SRI.V.A.PRADEEP KUMAR

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 799 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT P1 : TRUE COPY OF THE MEMORANDUM OF AGREEMENT UNDER SECTION 89 OF THE CPC BEFORE THE DISTRICT MEDIATION CENTRE, N.PARAVUR.
- EXT P2 : TRUE COPY OF THE AWARD PASSED BY THE LOK ADALATH DATED 18.7.2013 IN OS.NO.248/2010.
- EXT P3 : TRUE COPY OF THE EP 64/2014 IN OS NO 248/2010 FILED BY THE DECREE HOLDER P.K.BABU BEFORE THE ADDITIONAL SUB COURT, NORTH PARAVUR.
- EXT P4 : TRUE COPY OF THE OBJECTION FILED BY THE JUDGMENT DEBTOR PYARIJAN IN EP NO. 64/2014 IN OS NO.248/2010 BEFORE THE ADDITIONAL SUB COURT, NORTH PARAVUR.
- EXT P5 : TRUE COPY OF THE ORDER IN EP NO.64/2014 IN OS.NO.248/2010 OF THE COURT OF THE ADDITIONAL SUB JUDGE, NORTH PARAVUR.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B.KEMAL PASHA, J.

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O.P.(C). No.799 of 2015

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Dated this the 22nd day of June, 2015

J U D G M E N T

The proposed sale of the property in execution of a decree is under challenge. The judgment debtor, who is the petitioner herein, is challenging the sale of the property on various grounds. One of the main grounds taken up by the learned counsel for the petitioner is that three payments made by the judgment debtor towards the decree debt have not been accounted for. The sale is going to be conducted without deducting such payments.

2. The learned counsel for the petitioner has pointed out that amounts of ₹15,000/-, ₹5,000/- and ₹15,000/- paid by the petitioner towards the discharge of the decree have not been accounted for. It seems that the third payment

pointed out by the learned counsel for the petitioner is one made pursuant to the orders of this Court.

3. Another ground pointed out by the learned counsel for the petitioner is that the upset price fixed in respect of the property is too low and the same requires reconsideration. The learned counsel for the petitioner has got a complaint that even though the transaction was not a commercial transaction, an interest at the rate of 18% per annum is levied on. Of course, this Court is not making any opinion with regard to the illegality of that at present.

4. It seems that the court below has to decide as to what is the amount presently payable by the petitioner to the respondent as per law. An opportunity shall be given to the petitioner as well as the respondent to point out the actual amount presently payable. The learned counsel for the petitioner has expressed that the petitioner is ready to pay off the decree debt in instalments. Of course, the court below can take note of that. Even by going through the terms of the agreement between parties, it seems that the

value fixed for one cent of property is ₹2,50,000/-. It seems that 5 cents of property is now going to be sold in execution of the decree. The balance decree debt comes around ₹2,00,000/-. In such case, at any stretch of imagination, the upset price fixed by the court below is too low.

5. In the result, Exhibit P5 is set aside. The court below shall consider all the aforesaid aspects, arrive at the correct amount payable by the petitioner to the respondent, fix the proper upset price and proceed afresh in the matter.

With the said observations, this Original Petition (Civil) is allowed and the proclamation made by the Court below stands set aside.

Sd/-

B.KEMAL PASHA
JUDGE