

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

OP(C).No. 817 of 2015 ()

E.A. 370/2014 IN E.P. 101/2013 OF SUB COURT, HOSDURG

PETITIONER/RESPONDENT :

**SHAJI A., AGED 35 YEARS,
S/O. NARAYANAN, RESIDING AT PUTHANPURA HOUSE,
AJANUR KADAPPURAM, P.O.KOLAVAYAL, AJANUR VILLAGE,
KOSDURG TLAUK.**

**BY ADVS.SRI.T.K.VIPINDAS
SRI.K.V.SREE VINAYAKAN
SRI.K.M.MUHAMMED HUSSAIN**

RESPONDENT/APPLICANT :

**VIJAYA BANK, KANHANGAD BRANCH
REP. BY ITS SENIOR MANAGE HAVING OFFICE AT KANHANGAD,
HOSDURG VILLAGE, HOSDURG TLAUK, P.O.KHD - 671 315.**

BY ADV. SMT.LATHA KRISHNAN,SC, VIJAYA BANK

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 15-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE EXECUTION PETITION IN E.P.101/2013 IN O.S.106/2011 ON THE FILE OF COURT OF SUBORDINATE JUDGE, HOSDURG.
- P2:- TRUE COPY OF THE OBJECTION IN E.P.101/2013 FILED BY THE PETITIONER.
- P3:- TRUE COPY OF THE AMENDMENT APPLICATION IN E.A.369/2014 IN E.P.101/2013 ON THE FILE OF SUBORDINATE JUDGE, HOSDURG.
- P4:- TRUE COPY OF THE ORDER IN C.M.P 5179/2011 IN CRIME NO.402/2010 HSODURG POLICE STATION ON THE FILE OF COURT OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I, HOSDURG DATED 17.8.2011.
- P5:- TRUE COPY OF THE ORDER IN E.A.369/2014 IN E.P.101/2013 ON THE FILE OF SUBORDINATE JUDGE, HOSDURG DATED 22.1.2015.
- P6:- TRUE COY OF THE E.A.370/2014 ON THE FILE OF COURT OF MUNSIFF OF HOSDURG.
- P7:- THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN EA.370/2014 DATED 12.12.14.
- P8:- TRUE COPY OF THE ORDER IN EA.370/2014 IN E.P.101/2013 DTED 22.1.2015 ON THE FILE OF SUBORDINATE JUDGE, HOSDURG

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. ABRAHAM MATHEW, J.

O.P.(C).No. 817 of 2015

Dated this the 15th day of December, 2015

J U D G M E N T

The petitioner is the judgment debtor in OS 106 of 2011 which is for execution of a money decree. The respondent-decree holder has filed EP 101 of 2013. The executing court has ordered attachment of a vehicle belonging to the petitioner. But the attachment could not be effected. The contention of the petitioner is that the vehicle has been hypothecated to another financier and since it is involved in a criminal case it has been released to him under Section 457 Cr.P.C and he is bound to produce it before the criminal court when he is called upon to do so.

2. Heard the learned counsel on either side.

3. Merely because the vehicle has been hypothecated to a financier and that it has been released to the petitioner under Section 457 Cr.P.C the order of attachment cannot be said to be wrong. It is sufficient that the Munsiff passes appropriate directions with regard to alienation of the property or production of it before the

Magistrate court. He shall inform the Magistrate about the attachment after attachment is effected. In case the property is sold, the purchaser shall be directed to appear before the Magistrate and file an undertaking that he would produce it before the court if he is required to do so.

In the result, this OP is disposed of with the above directions.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge