

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

OP(C).No. 860 of 2015 (O)

(OS 744/2012 of PRINCIPAL SUB COURT, KOLLAM)

PETITIONER/PLAINTIFF:

NAZARUDEEN, AGED 56 YEARS,
S/O. IBRAHIMKUTTY, NAZIRA MANZIL,
MATHRUBHOOMI 18, RAMANKULANGARA,
KAVANADU P.O., KOLLAM.

BY ADVS.SRI.JOHNSON GOMEZ
SRI.S.BIJU (KIZHAKKANELA)

RESPONDENTS/DEFENDANT, GARNISHEE:

1. APPUKKUTTAN, AGED 43 YEARS,
S/O. THAMPI, ARJUN NIVAS,
MUNDAKKAL EAST, MUNDAKKAL P.O.,
KOLLAM - 691010.
2. THE EXECUTIVE ENGINEER, IRRIGATION,
SOUTH SUB DIVISION, PWG,
THIRUVANANTHAPURAM - 695 001.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
26-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.(C) 860/2015

A P P E N D I X

PETITIONER'S EXHIBITS:

- EXT.P1 : COPY OF PLAINT IN O.S.744/2012 ON THE FILE OF
PRINCIPAL SUB COURT, KOLLAM.
- EXT. P2 : COPY OF ORDER DTD.18.1.13 IN I.A.2676/12 IN
O.S.744/12 PASSED BY PRINCIPAL SUB COURT, KOLLAM.
- EXT. P3 : COPY OF I.A.2547/13 IN O.S.744/12 FILED BY R1
BEFORE PRINCIPAL SUB COURT, KOLLAM.
- EXT. P4 : COPY OF ORDER DTD.7.11.13 PASSED BY PRINCIPAL
SUB COURT, KOLLAM IN I.A.2547/13 IN O.S.744/12.
- EXT. P5 : COPY OF I.A.2547/13 IN O.S.744/12 FILED BY R1
BEFORE PRINCIPAL SUB COURT, KOLLAM.
- EXT. P6 : COPY OF I.A.708/15 IN O.S.744/12 FILED BY
PETITIONER BEFORE PRINCIPAL SUB COURT, KOLLAM.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.860 OF 2015

Dated this the 26th day of March, 2015.

J U D G M E N T

This original petition is filed under Article 227 of the Constitution of India seeking the following reliefs:

- a) Direct the Principal Sub Court, Kollam to consider Exhibit P6 I.A.No.708/2015 in O.S.No.744/12 in accordance with law expeditiously and to dispose of the same within a time frame prescribed by this Hon'ble Court and to direct the second respondent not to disburse the petition scheduled amount in Ext.P6 to the first respondent till such disposal.

2. The petitioner is the plaintiff in the suit namely, O.S.No.744/2012 before the Principal Sub Court, Kollam and the 1st respondent is the defendant and the 2nd respondent is the garnishee in the above said suit. The suit was filed for realisation of an amount of Rs.25,00,000/- with 12% future interest. After the suit was filed, the petitioner, coming to know that the

defendant has presented certain bills before the Irrigation Department for encashment, moved I.A.No.2676/2012 seeking to restrain the garnishee from making payment to the defendant as per the bill submitted by the defendant. That petition was allowed and the garnishee was directed not to disburse any amounts, as per Ext.P2 order.

3. The 1st respondent entered appearance in the suit and filed I.A.No.2547/2013 in O.S.No.744/2012 seeking modification of Ext.P2 order. He expressed his readiness and willingness to retain an amount of Rs.26,00,000/- with the garnishee and agreed to receive only the balance amount of the bill. Since the petitioner who is the plaintiff in the suit had no grievance regarding withdrawal of the balance amount, he agreed to an order being passed directing retention of Rs.26 lakhs with the garnishee. The complaint is that under the guise of the order so obtained, entire bill amount was withdrawn by the 1st respondent thereby violating the order of the court below.

4. The petitioner later came to know that the 1st respondent has submitted certain bills for encashment of further

amount and if that amount is disbursed, according to the petitioner, he may not have any remedy to realise the amount in case he succeeds in the suit. The petitioner therefore moved Ext.P6 namely, I.A.No.708/2015 for an interim order directing the garnishee not to disburse the amount as per the bill submitted by the 1st respondent. The grievance is that the said application stands posted to 30.03.2015 and the petitioner recently came to know that the respondents are proceeding to encash the bill amount and to complete the process on or before 28.03.2015. It is prayed that till the matter is heard on 30.03.2015, garnishee may be directed not to disburse the amount to the 1st respondent.

5. After having heard the learned counsel appearing for the petitioner, in the light of the submission made by the petitioner and the averments in the petition, it is felt that it is only appropriate that till I.A.No.708/2015 in O.S.No.744/2012 which is posted to 30.03.2015 is heard on merits, garnishee be directed not to disburse the amount to the 1st respondent.

This original petition is disposed of with a direction to the garnishee not to disburse the amount due to the 1st respondent till 30.03.2015, the date on which the I.A.No.708/2015 is posted for hearing.

Sd/-

**P.BHAVADASAN
JUDGE**

smp