

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

OP(C).No. 941 of 2015 (O)

OS 5/2015 OF SUB COURT, KARUNAGAPPALLY
.....

PETITIONER(S):

**SALEENA BEEVI @ SALEENA,
D/O.ABDUL MUTHALIF, MALLAYIL VEEDHU,
VADAKKUMTHALA KIZHAKKUM MURI, VADAKKUMTHALAVILLAGE,
KARUNAGAPPALLY.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S):

**SUMA PHILIP,
W/O.PHILIPOSE, NADANYA, VADAKKUMTHALA KIZHAKKUMMURI,
VADAKKUMTHALA VILLAGE, KARUNAGAPPALLY - 690 518.**

**BY ADVS. SRI.ASP.KURUP
SRI.SADCHITH P. KURUP**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 941 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE PLAINT O.S. 5/2015 FILED BEFORE THE SUB COURT, KARUNAGAPPALLY DATED 6.2.2015.
- EXT.P-2: TRUE COPY OF THE APPLICATION I.A. 260/2015 IN O.S. 5/2015 BEFORE THE SUB COURT, KARUNAGAPPALLY DATED 6.2.2015.
- EXT.P-3: TRUE COPY OF THE ORDER DATED 10.2.2015 IN I.A. 260/2015 IN O.S. 5/2015 BEFORE THE SUB COURT, KARUNAGAPPALLY.
- EXT.P-4: TRUE COPY OF THE WRITTEN STATEMENT DTD.20.3.2015 BEFORE THE SUB COURT, KARUNAGAPPALLY.
- EXT.P-5: TRUE COPY OF THE NOTICE DTD.11.2.2015.
- EXT.P-6: TRUE COPY OF THE PROCEEDING DTD.NIL BY WAY OF C.M.P.NO.8699/2014 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KARUNAGAPPALLY.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
O.P.(C) No.941 of 2015
.....

Dated this the 3rd day of June, 2015

J U D G M E N T

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A suit for money based on a dishonoured cheque is filed as OS.5/2015. The suit amount comes to ₹36,600/-. Along with the suit, the plaintiff has preferred IA.260/2015 seeking an order of conditional attachment under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908. Even prior to that, as there were disputes between the parties, the petitioner herein, who is the defendant in the suit, had preferred a caveat. In the pendency of the caveat, the suit and the IA have been filed. Notice of the IA was ordered. Learned counsel for the petitioner had appeared before the court below on 10.02.2015 and sought for an adjournment for filing counter. It seems that the court below has placed the following order in the form of Ext.P3:-

“Defendant prays. Prayer of the defendant who had already filed a caveat is rejected. Until further orders, interim attachment is ordered. Petition is posted with suit.”

Ext.P3 is under challenge.

2. Heard learned counsel for the petitioner and learned counsel for the respondent.

3. Much discussion is not required to conclude that Ext.P3 order as such is *per se* illegal. It seems that the court below has not observed the conditions specified in Order XXXVIII Rule 5 in passing Ext.P3 order. If at all, such an order of conditional attachment had to be passed, the court below ought to have called upon the petitioner herein to furnish security for the suit amount. Only on his failure to furnish security as may be ordered, an order of attachment could be passed. Of course, in the meantime, an order of conditional attachment could have been passed. However, in this case, after passing an order of interim attachment

without having recourse to the provisions of Order XXXVIII Rule 5 CPC, it seems that the court below has chosen to post the IA along with the suit.

4. The learned counsel for the petitioner has pointed out that the attachment has been sought for over 4 items of property. Item No.3 is a property having an extent of 37.67 ares. When such a large extent of property is involved, the court below ought to have considered whether all the 4 items of properties should be placed under attachment. Ext.P3 order is liable to be set aside.

In the result, this OP(Civil) is allowed and Ext.P3 order shall stand set aside. The matter is remitted to the court below for fresh disposal in accordance with law. The court below shall follow the mandates of Order XXXVIII Rule 5 CPC. The court below shall dispose of the IA, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. In the meantime, the petitioner herein is restrained from

alienating or transferring any of the items of the properties presently under attachment. The court below shall examine as to whether the whole properties are to be attached or only some of the properties have to be attached.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/03/06

// True Copy //

PA to Judge