

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

OP(C).No. 943 of 2015 (O)

**(E.A.NO.106/2015 IN E.P.NO.90/2013 IN O.S. NO.200/2012 ON THE FILE OF THE
SUBORDINATE COURT, KOTTARAKKARA)**

PETITIONER:

**GANGADHARAN PILLAI,
AGED 75 YEARS, S/O.LATE SRI.KUNJAN PILLAI,
PAZHANJIKKADAVU PUTHEN VILA, PIDAVOOR VILLAGE,
PATHANAPURAM THALUK, KOLLAM DISTRICT.**

**BY ADVS.SRI.R.SURAJ KUMAR
SMT.V.BEENA**

RESPONDENT(S):

**ALI,
AGED 40 YEARS, S/O.ERAVU,
KUZHICKATTIL HOUSE,
MUSAVARIKUNNU, PUNALUR VILLAGE,
PATHANAPURAM THALUK,
KOLLAM DISTRICT.**

BY ADV. MANOJ RAMASWAMY

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

vmr.

APPENDIX

PETITIONERS EXHIBITS

- EXHIBIT P1- TRUE COPY OF THE DECREE DATED 18TH MARCH 2013 IN
O.S.NO.200/2012 ON THE FILE OF SUBORDINATE JUDGE'S COURT.**
- EXHIBIT P2- TRUE COPY OF THE PETITION, I.A.NO.517/2015 DATED 21/03/2015 IN
O.S.NO.200/2012 ON THE FILE OF THE SUBORDINATE JUDGE'S
COURT, KOTTARAKKARA.**
- EXHIBIT P3- A TRUE COPY OF THE PETITION, I.A.NO.518/2015 DATED 21/03/2015 IN
O.S.NO.200/2012 ON THE FILE OF THE SUBORDINATE JUDGE'S
COURT, KOTTARAKKARA.**
- EXHIBIT P4- TRUE COPY OF THE APPLICATION E.A.NO.106/2015 1 E.P.NO.90/2013 IN
O.S.NO.200/2012 DATED 21/03/2015 ON THE FILE OF THE
SUBORDINATE JUDGE'S COURT, KOTTARAKKARA.**

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

vmr

P.BHAVADASAN, J.

O.P.(C) No. 943 of 2015

Dated this the 01st day of April, 2015

J U D G M E N T

The petitioner suffered an exparte decree in a suit for specific performance and he claims that though he had made arrangements to defend the suit, he was betrayed by his daughter and he went undefended. He came to know about the calamity only when he received notice in the execution proceedings regarding eviction of his property. Soon thereafter, he filed a petition to set aside the exparte decree and also a petition to condone the delay in filing the petition to set aside the exparte decree. They are pending consideration. In the light of the said fact, the petitioner claims to have filed Ext.P4 petition before the execution court under Order XX1, Rule 26 praying for staying the execution proceedings till the petitions for condonation of delay and to set aside the exparte decree are considered.

2. The grievance of the petitioner is that keeping those petitions pending, now delivery has been ordered on

04.04.2015 to which, according to the petitioner, is not proper.

3. The caveator appearing for the respondent contended that the suit was listed in 2013 and execution proceedings were taken soon thereafter.

4. Whatever that be, in the light of the fact that there is petition under Order XX1 Rule 26 before the execution court as evidenced by Ext.P4, it is absolutely essential that the court below should dispose it of before proceeding further with the execution.

This petition is disposed of directing the court below to dispose of Ext.P4 i.e. E.A. filed under Order XX1 Rule 26 in E.P.No. 90/2013 in O.S.No. 200/2012 as expeditiously as possible, at any rate, within a period of one month from the date of re-opening of the court and thereafter proceed with the execution.

Sd/-
P.BHAVADASAN
JUDGE

ds