

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. 958 of 2015 (O)

OS 672/2013 of MUNSIF COURT,ALUVA.
E.P. NO. 116/2015 OF MUNSIF COURT,
THIRUVANANTHAPURAM.

PETITIONER(S)/DEFENDANTS:

1. M/S.AIYAPPAS SILK HOUSE,
A REGISTERED FIRM HAVING OFFICE
AT AIYAPPAS CIRCLE,
OPPOSITE S.L. THEATRE,
THIRUVANANTHAPURAM AND REPRESENTED BY
PARTNER MR. R. NAGARAJAN.
2. MR. R. NAGARAJAN, PARTNER,
M/S. AYYAPPAS SILK HOUSE,
AIYAPPAS CIRCLE,
OPPOSITE S.L. THEATRE,
THIRUVANANTHAPURAM.
3. MRS. MAHESWARI, PARTNER,
M/S. AYYAPPAS SILK HOUSE,
AIYAPPAS CIRCLE,
OPPOSITE S.L. THEATRE,
THIRUVANANTHAPURAM.

BY ADVS.SRI.SREELAL N.WARRIER
SRI.J.R.PREM NAVAZ
SRI.P.T.SHEEJISH

RESPONDENT(S)/PLAINTIFF:

M/S.VASTRA ENTERPRISES,
XX/199Y, M.M. BAZAR, ALUVA ROAD,
ANGAMALY, REPRESENTED BY ITS PROPRIETOR,
VENUGOPAL V., AGED 45 YEARS,
S/O. GOVINDA MENON.

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

O.P.C. 958/2015

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : TRUE PHOTOCOPY OF THE EX-PARTE MONEY DECREE IN THE ABOVE SUIT O.S. NO. 672/2013 ON THE FILE OF THE MUNSIF COURT, ALUVA.

EXT. P2 : TRUE PHOTO COPY OF THE E.P. NO. 116/2015.

EXT. P3 : TRUE PHOTO COPY OF THE I.A. NO. 162 OF 2015 IN O.S. NO. 672/2013 ON THE FILE OF THE MUNSIF COURT, ALUVA UNDER ORDER 9 RULE 13 OF CPC FOR SETTING ASIDE EX PARTE DECREE.

EXT. P4 : TRUE PHOTO COPY OF THE I.A. NO. 600 OF 2015 IN E.P. NO. 116 OF 2015 ON THE FILE OF THE MUNSIF COURT, ALUVA FOR SUBSTITUTION OF SECURITY.

EXT. P5 : TRUE PHOTO COPY OF THE FIXED DEPOSIT RECEIPT PRODUCED IN MUNSIF COURT, ALUVA ALONG WITH EXT. P3 APPLICATION.

P. BHAVADASAN, J.

O.P.(C). No. 958 of 2015

Dated this the 1st day of April, 2015.

JUDGMENT

This is a petition filed under Article 227 of the Constitution of India for the following reliefs:

“(a) Issue appropriate orders/directions directing the Hon'ble Munsiff Court, Thiruvananthapuram to accept the alternative security as sought for in Ext.P4 application in E.P. No. 116/2015 in O.S. No. 672/2013 on furnishing of alternative security required to satisfy the attachment amount and lift the attachment over the property now ordered.

Or in the alternative

direct the trial court at Aluva itself to execute any decree if may be passed accepting the alternative security deposited before it as per Ext.P4 application.”

2. Petitioners are the defendants in a suit for money and they suffered an ex parte decree. They filed Ext.P3 application to set aside the ex parte decree and later they produced a Fixed Deposit receipt for a sum of Rs.7,80,000/- so as to show their bonfides in contesting the

case. In the meanwhile, execution proceedings have been initiated and the property of the petitioner was attached. The petitioners point out that if further proceedings in execution is allowed to be continued, they will be put to irreparable loss and injury. Until their petition to set aside the ex parte decree is considered and decided, further proceedings in execution may not be continued.

3. After having heard counsel for the petitioners, this Court finds that there is some merit in the grievance voiced by the petitioners.

This Original Petition is disposed of directing Munsiff's Court, Aluva to consider and dispose of Ext.P3 application after hearing all the parties. Till then, execution proceedings in O.S. 672 of 2013 shall be kept in abeyance.

sb.

P. BHAVADASAN,
JUDGE