

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

OP(C).No. 1046 of 2015 (O)

E.P.NO.119/2013 IN O.S.NO.202/2003 OF MUNSIFF COURT, KALPETTA.

PETITIONER:

**KOTTARATHIL ABRAHAM,
KOTTARATHIL HOUSE, VAZHAVATTA,
MUTTIL AMSOM DESOM,
VYTHIRI TALUK, WAYANAD DISTRICT.**

**BY ADVS.SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ
SRI.R.RADHAKRISHNAN NAIR (KOLLAM)**

RESPONDENT:

**KOZHALIPARAMBIL VARGHESE,
KOLAGAPPARA, AMBALAVAYAL DESOM,
S.BATHERY TALUK, WAYANAD DISTRICT - 693592.**

BY ADV. SRI.A.V.JAMES

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 11-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 1046 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT-P1: TRUE COPY OF THE MEMORANDUM OF EP NO.119/2013 IN
O.S.NO.202/2003.

EXHIBIT-P2: TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER IN
E.P.NO.119/13 IN O.S.NO.202/2003.

EXHIBIT-P3: TRUE COPY OF THE AFFIDAVIT DATED 21/01/2015 FILED BY THE
PETITIONER IN E.P.NO.119/13 IN O.S.NO.202/2003.

EXHIBIT-P4: TRUE COPY OF THE ORDER DATED 13/03/2015 IN E.P.NO.119/2013 IN
O.S.NO.202/2003 OF THE MUNSIF COURT, KALPETTA.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

B.KEMAL PASHA, J.

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O.P.(C). No.1046 of 2015

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Dated this the 11th day of June, 2015

J U D G M E N T

In execution of a money decree, notice under Order 21 Rule 37 of the CPC has been ordered. The judgment debtor, who is the petitioner herein, has entered appearance and filed a detailed counter. Evidence was recorded from the side of the decree holder. Annexure A2 letter received under the Right to Information Act from the Executive Engineer, Karappuzha Project Division No.E4-461/12 dated 27.05.2014 was produced and proved. Annexure A2 shows that at that point of time, the petitioner was a Government Contractor. The decree amount comes to ₹1,31,695/-. The

petitioner contended that even though at that point of time the petitioner was Government Contractor, subsequently he has ceased to be a Contractor. According to him, presently he is working under another Contract as an employee on a meager income of ₹6,000/- per month. It seems that the court below by relying on Exhibit A2 and the evidence tendered by the decree holder found that the petitioner has means to pay the E.P. amount in lump and he is willfully neglecting the payment. Exhibit P4 order passed by the Court below to that effect is under challenge.

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

3. The learned counsel for the petitioner relied on a decision in **Jayadev Singh v. Majeeth [2010 (3) KLT SN 4 (C.No.5)]**, wherein it was held that :

“Mere fact that the Judgment debtor was the Managing Director of a company at one point of time, would not mean that he continues to be so as on the date of execution or that he has sufficient means but he refuses to pay.”

The learned counsel for the petitioner has also relied on **Jolly George Varghese v. Bank of Cochin [1980 KLT 375 (SC)]**, wherein it was held that the question to be considered is whether at the time of execution of decree, the Judgment debtor has sufficient means to pay off the decree debt. The above two decisions have no application in the matter in hand. It clearly stands proved before the court below through the evidence adduced by the decree holder that the petitioner has the means to pay the decree debt. Through Exhibit A1, it has come out that the petitioner had received payments for the works done for the period 2012-13 as a Contractor. Therefore, the case of the petitioner that he ceased to be a Contractor in the year 2010, cannot be believed. Through Exhibit A1 and A2 and the evidence of the decree holder, it seems that the decree holder has discharged his burden to prove the means of the petitioner to pay off the decree debt in lump. When it is proved by the decree holder through oral as well as documentary evidence that the petitioner has sufficient means to pay off the decree

debt in lump, it is for the petitioner to disprove the said fact. It seems that the court below has passed a well considered order through Exhibit P4. I do not find any illegality, irregularity or jurisdictional error in the impugned order. This Original Petition (Civil) is devoid of merits and is only to be dismissed, and I am doing so.

In the result, this Original Petition (Civil) is dismissed.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/12/6/15