

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

OP(C).No.1048 of 2015 (O)

I.A 286/2015,I.A 535/2015 AND I.A 281/2015 IN OS 4/2015 of PRINCIPAL SUB
COURT,KOLLAM.

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PETITIONER/(RESPONDENT IN IA 286/2015 & PETITIONER IN IA 535/2015 AND
RESPONDENT 2 IN IA 281/2015:

VIVA TRUST,RAJAGIRI,SASTHAMCOTTA,
REPRESENTED BY ITS CHAIRMAN CUM
MANAGING TRUSTEE REV.FR.DR.G.ABRAHAM THALOTHIL ,
RAJAGIRI,SASTHAMCOTTA,KOLLAM DISTRICT.

BY ADV.SRI.H.RAMANAN

RESPONDENT'S/(PETITIONER IN IA 286/2015 & RESPONDENT IN IA 535/15 AND IA
281/15)RESPONDENT 2 (PETITIONER IN IA 281/15):

1. M/S.FINE FOUNDATIONS PRIVATE LTD,
SREEKARYAM,THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING DIRECTOR,
EASO KURIES,S/O.UNNUNNI,RESIDING AT GRA K 41,
GANDHIPURAM,SREEKARYAM P.O,
THIRUVANANTHAPURAM,PIN-695017.
2. MANOJ SUKUMARAN,S/O.LATE SUKUMARAN,
THADATHIL VEEDU,KUMARANALLOOR P.O,
KOTTAYAM-686016.

R1 BY ADV.SRI.HARISH GOPINATH
R2 BY ADV.SRI.LIJJ.VADAKEDOM

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

OP (C).No.1048 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:

- P1:- TRUE COPY OF PLAINT DTD 16/4/2014 IN OS 4/15.
- P2:- TRUE COPY OF THE WRITTEN STATEMENT CUM COUNTER CLAIM
DTD 25/6/2014 IN -DO-
- P3:- TRUE COPY OF IA 286/15 DTD 25/9/2014 FILED BY THE 1ST RESPONDENT.
- P4:- TRUE COPY OF PETITIONERS COUNTER DTD 17/11/2014 TO DO.
- P5:- TRUE COPY OF IA 281/2015 DTD 7/2/2015 FILED BY 2ND RESPONDENT.
- P6:- TRUE COPY OF PETITIONERS COUNTER DTD 3/3/2015 TO DO.
- P7:- TRUE COPY OF IA 535/2015 DTD 28/2/2015 FILED BY PETITIONER.
- P8:- TRUE COPY OF COMMON ORDER DTD 26/3/2015 PASSED BY PRINCIPAL
SUB COURT, KOLLAM.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

B.KEMAL PASHA, J.

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O.P.(C).No.1048 of 2015

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Dated this the 7th day of July, 2015

J U D G M E N T

Petitioner is the 1st defendant in O.S.No.4 of 2015 of the Principal Sub Court, Kollam. He challenges Exhibit P8 order on I.A.No.286 of 2015 and I.A.No.281 of 2015 in the suit. The plaintiff has sought for a decree for the realization of ₹42,03,752/- from the 1st defendant, who is the petitioner herein, for the works done by him, with interest at the rate of 12% per annum. I.A.No.286 of 2015 is filed by the plaintiff seeking permission to remove plaint C schedule machines and materials from the premises of the 1st defendant, which, according to the petitioner, he had hired out from the Additional 2nd defendant. In the written statement filed by the petitioner, it was specifically admitted in paragraph 20.3 as follows:

“20.3. It is learnt that the owner of some of the machines and materials kept in the defendants’ school premises and mentioned in C schedule of plaint is of one

Manoj Sukumaran, S/o.late Sukumaran, Thadathil Veedu, Kumaranelloor P.O., Kottayam Dist and has been frequently calling Rev Fr Dr G.Abraham Thalotheil for getting back his machineries and materials. It is hereby submitted that the defendant is willing to return the machines and materials to the real owner if and when ordered by this hon'ble court."

2. It seems that the only contention resorted to by the petitioner is that the said machinery and materials are the properties belonging to the Additional 2nd defendant and the petitioner is willing to return the said articles to the Additional 2nd defendant. I.A.No.281 of 2015 is filed by the Additional 2nd defendant claiming aforesaid materials annexed along with I.A.No.281 of 2015. In the annexure, it is shown that Acro Span 27 Nos, Jacks 35 Nos, Sheet 55 Nos, Adjustable sheet 10 Nos and small sheet 170 Nos are the properties of the Additional 2nd defendant and therefore, he has sought for permission to remove the said materials from the premise of the 1st defendant. The court below has allowed I.A.No.281 of 2015 in part, thereby directing the plaintiff to entrust Item Nos. 1 to 4 to the Additional 2nd defendant, by removing it from the premises of the 1st defendant. Further the court

below allowed I.A.No.286 of 2015 by permitting the plaintiff to remove the movable sought for in I.A.No.286 of 2015 in the presence of the Advocate Commissioner. The court below has appointed an Advocate Commissioner to supervise the removal of the plaint C and D schedule properties.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. According to the learned counsel for the petitioner, there is *inter se* claims between the plaintiff and the Additional 2nd defendant and therefore, the materials can be released to the Additional 2nd defendant on obtaining security from him. It seems that in the written statement, the petitioner has categorically admitted that the said materials are the properties belonging to the Additional 2nd defendant and he is ready and willing to release the said materials to the Additional 2nd defendant, who is the real owner. In such case, there is no meaning in canvassing for an argument that security should be ordered to be furnished by the Additional 2nd defendant for getting those materials released. There is

no reason to challenge the said orders passed by the court below. This Original Petition (Civil) is devoid of merits and is only to be dismissed and I do so.

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

Sd/-

B.KEMAL PASHA
JUDGE

DSV/7/7/15