

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

OP(C).No. 1111 of 2015 (O)

**AGAINST THE JUDGMENT IN OS 25/2015 OF PRINCIPAL MUNSIF COURT,
ERNAKULAM,**

PETITIONER(S):

**A.V.CHANDRAN, AGED 43 YEARS,
S/O.VELAYUDHAN, ANTHIKAD HOUSE, PALAKKAD VILLAGE,
PALAKKAD P.O, D.P.O ROAD, PALAKKAD TALUK,
PALAKKAD DISTRICT-678 007.**

BY ADV. SRI.P.V.VARGHESE (KANJIRAMATTAM)

RESPONDENT(S):

**M/S.SUNDARAM FINANCE LTD.,
REP. BY ITS BRANCH MANAGER,
1ST FLOOR, THE MONARCH, P.T USHA ROAD,
ERNAKULAM, KOCHI-682 011.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 24-04-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

:2:

OP(C).No. 1111 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 TRUE PHOTOSTAT COPY OF THE PLAINT IN O.S NO 25/2015 ON THE FILES OF PRINCIPAL MUNSIFF COURT ERNAKULAM.

EXT.P2 TRUE PHOTOSTAT COPY OF REGISTRATION CERTIFICATE PERTAINING TO THE VEHICLE BEARING REG.NO.KL-09 AF 9339 INNOVA CAR.

EXT.P3 TRUE PHOTOSTAT COPY REPAYMENT SCHEDULE.

EXT.P4 TRUE PHOTOSTAT COPY AWARD DATED 03.12.2014 IN ARBTN. CASE NO.SK/SF/568/2014.

EXT.P5 TRUE PHOTOSTAT COPY I.A. NO 106/2015 IN O.S NO 25/2015 ON THE FILES OF PRINCIPAL MUNSIFF COURT ERNAKLULAM.

EXT.P6 TRUE PHOTOSTAT COPY I.A.NO.1334/2015 IN O.S NO 25/2015 ON THE FILES OF PRINCIPAL MUNSIFF COURT ERNAKLULAM.

EXT.P7 TRUE PHOTOCOPY OF THE I.A NO 3227/2015 IN O.S NO 25/2015 ON THE FILES OF PRINCIPAL MUNSIFF COURT ERNAKULAM.

RESPONDENT(S)' EXHIBITS

: NIL

//True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Original Petition (Civil) No.1111 of 2015

Dated this the 24th day of April, 2015

J U D G M E N T

This petition is filed by the petitioner, who is the plaintiff in O.S.25/2015 on the file of the Principal Munsiff Court, Ernakulam, seeking certain reliefs under Article 227 of the Constitution of India.

2. It is alleged in the petition that, the petitioner is the registered owner of the Innova car with Registration No.KL-09/AF-9339 and he availed a loan of ₹10,00,000/- from the respondent. He committed default and an amount of ₹3,33,390/- was due. Since the vehicle was hypothicated as per Ext.P3 hypothication agreement with the respondent, arbitration proceedings were initiated and Ext.P4 ex-parte award has been passed. Thereafter he filed O.S.No.25/2015 before the Munsiff Court, Ernakulam, seeking permanent prohibitory injunction restraining the respondent from dispossessing him from holding possession

of the vehicle and filed I.A.No.106/2015 as Ext.P5 for that purpose. The respondent filed I.A. No.1334/2015 to stay the suit as Ext.P6 and though temporary injunction was granted, that was not extended as there was no regular sitting in the Munsiff Court. The petitioner filed I.A.No.3227/2015 to permit the petitioner to clear the over dues within a time frame and remit the future installments from April 2015 onwards. Though a mediation attempt was made, it could not be settled. Since there is no sitting, no orders have been passed in Ext.P7 petition. So the petitioner has no other remedy, except to approach this court, seeking the following reliefs:

1. Issue appropriate orders calling for the records leading to Ext.P7 and pass orders permitting the petitioner to regularize the account by clearing the overdue within a period of 6 months and by further permitting the petitioner to pay future installment from the month of April, 2015 onwards,
2. Issue appropriate orders directing the respondent not to obstruct the plying of the vehicle bearing Reg.No.KL-09AF 9339 Innova car bearing Engine No.2KDU341842 and chassis No.MBJ11JV40074177200713 by the petitioner for a period of 6 months so as to enable the petitioner to clear the overdues and regularize the account.
3. Allow the petitioner to recover full costs incurred by him for the institution and conduct of this original petition

from the respondent.

3. Heard the counsel for the petitioner.

4. The counsel for the petitioner submitted that, he is prepared to regularize the account and if notice is ordered that could be possible.

5. Considering the nature of relief claimed, this court feel that, this can be disposed of without issuing notice to the respondent. On going through the allegations in the petition itself, it is seen that, an ex-parte arbitration award has already been passed against the petitioner as per Ext.P4 award. It is also an admitted fact that, the petitioner filed O.S.25/2015 before the Principal Munsiff Court, Ernakulam and filed I.A.No.106/2015 for interim order of injunction and it appears that interim order was granted for a limited period and thereafter it was not extended. It is also an admitted fact that, the respondent herein appeared in the suit and filed I.A.No.3434/2015 for stay of the

proceedings in view of the arbitration clause in the agreement between the parties and no orders have been passed in that application as there was no regular sitting in that court. The petitioner also filed I.A.No.3227/2015 for regularizing the account and that petition was also pending before the same court. Since it is a pending matter before the Subordinate Court and during vacation, the vacation court can consider those matters and if any urgent relief is required that can be considered and passed by that court, this court feels that, it is not a fit case to invoke the power under Article 227 of the Constitution of India to pass any order in this petition. The petitioner can very well move the vacation court for passing some orders in the applications pending before the Munsiff Court, Ernakulam and if such an application is filed, the vacation court is directed to consider and pass appropriate orders in that application, after hearing the counsel for the respondent in the matter

as it is a pending matter before the Subordinate Court and dispose of the application in accordance with law.

With the above direction and observation, the petition is disposed of.

Sd/-

K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge

ss