

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYASHTA, 1937

OP(C).No.1132 of 2015 (O)

**I.A.NO.1023/2015 IN UNNUMBERED OS OF 2015 OF THE DISTRICT COURT,
KOLLAM.**

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PETITIONER:

**SIYAVUDEEN,S/O.KABEERKUTTY,AGED 37 YEARS,
NJARAVILA VEEDU,AIKYA NAGAR-207,
VADAKKEVILA P.O,KOLLAM,SOLE PROPRIETOR
M/S.AFRAS CASHEW TRADERS,
KALLUMTHAZHAM,KILIKOLLOOR,KOLLAM,KERALA.**

**BY ADVS.SRI.N.D.PREMACHANDRAN
SRI.D.AJITHKUMAR**

RESPONDENT'S:

- 1. M/S.SAMISONS TRADING LLC,
P.O.BOX - 252346,DUBAI,UAE.**
- 2. THE COMMISSIONER OF CUSTOMS (IMPORTS),
CUSTOMS HOUSE,TUTICORINE,TAMIL NADU.**
- 3. THE VOC PORT TRUST,TUTICORINE,TAMIL NADU.**

***ADDITIONAL R4 IMPEADED**

**ADDL.R4:M/S.MUNNA CASHEW INDUSTRIES,
AMPAZHAVAYAL,PANAYAM,REPRESENTED BY ITS
PROPRIETOR, E.ABDUL SALAM,S/O.EBRAHIM KUTTY,
AGED 48 YEARS,RESIDING AT MUNNA VILLA,
THRIUMULLAVARAM,KOLLAM.**

***ADDITIONAL R4 IMPEADED AS PER ORDER DATED 1.6.2015 IN I.A.
NO.6892/2015 IN OP(C) NO.1132/2015**

BY ADV.SRI.D.KISHORE

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (C).No.1132 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:

- P1 - A COPY OF THE CONTRACT NO.STL/ACT/IVC/002/2015 DATED 12.03.2015.
- P2 - COPY OF THE SWIFT TRANSMISSION DATED 17.3.2015 ISSUED BY THE PUNJAB NATIONAL BANK, KOLLAM.
- P3 - COPY OF THE SWIFT TRANSMISSION DATED 23.3.2015 ISSUED BY THE PUNJAB NATIONAL BANK, KOLLAM.
- P4 - A COPY OF THE CERTIFICATE DATED 4.5.2015 FROM THE PUNJAB NATIONAL BANK.
- P5 - A COPY OF THE HIGHSEAS CONFIRMATION DATED 19.3.2015 IN RESPECT OF ARK CASHEW INDUSTRIES.
- P6 - A COPY OF THE HIGHSEAS CONFIRMATION DATED 14.3.2015 IN RESPECT OF SREE GAYATHRI CASHEWS.
- P7 - A COPY OF THE HIGHSEAS CONFIRMATION DATED 19.3.2015 IN RESPECT OF SREENIVAS IMPLEX.
- P8 - A COPY OF THE HIGHSEAS CONFIRMATION DATED 19.3.2015 IN RESPECT OF SREEKRISHNA CASHEW.
- P9 - A COPY OF THE HIGHSEAS CONFIRMATION DATED 15.3.2015 IN RESPECT OF SINAN CASHEW.
- P10 - A COPY OF THE HIGHSEAS CONFIRMATION DATED 16.3.2015 IN RESPECT OF DCS TRADERS.
- P11 - A COPY OF THE HIGHSEAS CONFIRMATION DATED 14.3.2015 IN RESPECT OF JYOTHI CASHEW.
- P12 - A COPY OF THE HIGHSEAS CONFIRMATION DATED 14.3.2015 IN RESPECT OF N.S.CASHEW COMPANY.
- P13 - A COPY OF THE PLAINT FILED BEFORE THE SUB COURT, KOLLAM.
- P14 - A COPY OF THE ATTACHMENT PETITION.
- P15 - A COPY OF THE SCHEDULE OF ATTACHMENT.
- P16 - A COPY OF THE TYPED TRUE COPY OF THE ORDER.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

B. KEMAL PASHA, J.

.....
O.P.(C) No.1132 of 2015
.....

Dated this the 1st day of June, 2015

J U D G M E N T

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The petitioner in I.A.953/2015 in OS.No.48/2015 of the Subordinate Judge's Court, Kollam, has filed an application for getting him impleaded in the OP. He is impleaded as the additional 4th respondent.

2. Heard the learned counsel for the petitioner and the learned counsel for the additional 4th respondent.

3. It has come out that IA.6304/2015 was filed by the petitioner herein before the court below in OS.No.48/2015 seeking an order of interim attachment of the stock of cashew that was allegedly in the name of the 1st respondent. According to the learned counsel for the petitioner, this Court has passed an order of attachment, during vacation, as prayed for and at the time of attachment, the goods belonged to the 1st respondent. Now, the

additional 4th respondent claims that in case of continuance of the attachment, he would be put to irreparable loss and injuries and, therefore, he prays for lifting the order of attachment over the stock of cashew involved in the matter. The additional 4th respondent herein has filed IA.953/2015 before the court below in the suit by way of a claim petition for getting the attachment lifted.

4. The learned counsel for the additional 4th respondent submits that the additional 4th respondent is ready to furnish sufficient security of getting the attachment over the stock of cashew in the matter, lifted. The apprehension forwarded by the learned counsel for the petitioner is that in case of the lifting of attachment, the 1st respondent, who is an overseas seller of cashew, would vanish, and in case the decree happens to be passed against the 1st respondent, the petitioner may not get the fruits of the decree. That has to be taken note of by the court below. When the petitioner has got a case that at the

time when the attachment was passed, the goods belonged to the 1st respondent, for getting the attachment lifted, at present, the security that may be furnished by the additional 4th respondent in the matter, should cover the security to be furnished to the 1st respondent also for getting the attachment lifted. That means, the additional 4th respondent herein should act as a garnishee in respect of the liability, which may be put on the 1st respondent also in case of a decree against the 1st respondent. If the additional 4th respondent is ready to furnish such a security by undertaking that he would meet the decree that may be passed against the 1st respondent also, the court below can lift the attachment.

5. The court below shall dispose of the claim petition as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. In the meantime, if an order is required for lifting the attachment, the aforesaid conditions would apply. In case the additional

4th respondent furnishes security as aforesaid, the attachment shall be lifted forthwith, in the light of the observations made above.

With the said observations, this OP(Civil) is disposed of as above.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/01/06

// True Copy //

PA to Judge