

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

OP(C).No. 1155 of 2015 ()

**OS NO. 300/2011 OF PRINCIPAL SUB COURT,
THIRUVANANTHAPURAM**

PETITIONER :

**NAUSHAD, AGED 40 YEARS,
S/O.ISMAIL, RESIDING AT KIZHAKKUMKARA HOUSE,
KAZHAKKUTTAM, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.V.SURESH
SRI.G.SUDHEER**

RESPONDENT :

**LATHAKUMARI, D/O.PANKAJAKSHI,
KODIVILAKATHU VEEDU, VADAKKUMBHAGAM,
KAZHAKKUTTAM P.O, THIRUVANANTHAPURAM.**

R1 BY ADV. SRI.K.P.SUJESH KUMAR

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** COPY OF THE PLAINT IN OS 300/2011 FILED BY THE PETITIONER BEFORE THE SUBORDINATE JUDGES COURT, THIRUVANANTHAPURAM.
- EXHIBIT P2:** COPY OF THE AGREEMENT DATED 22.1.11 EXECUTED BY THE RESPONDENT IN FAVOUR OF THE PETITIONER.
- EXHIBIT P3:** COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT IN OS 300/11 BEFORE THE SUB COURT, THIRUVANANTHAPURAM DATED 25.6.12.
- EXHIBIT P4:** COPY OF THE ORDER DATED 6.3.15 IN OS 300/11 PASSED BY THE PRINCIPAL SUB JUDGE, THIRUVANANTHAPURAM.
- EXHIBIT P5:** COPY OF THE PETITION IN IA NO.898/15 IN OS 300/11 FILED BY THE RESPONDENT BEFORE THE SUB COURT, THIRUVANANTHAPURAM DATED 12.3.15.
- EXHIBIT P6:** COPY OF THE ORDER IN OS 300/11 DATED 13.3.15 PASSED BY THE PRINCIPAL SUB COURT, THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B. KEMAL PASHA, J.

.....
O.P.(C) No.1155 of 2015
.....

Dated this the 3rd day of July, 2015

J U D G M E N T

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Exts.P4 and P6 orders are under challenge. At the time of letting evidence in the suit before the court below, Ext.P2 document was produced. A contention was taken up that the said document is insufficiently stamped. The court below has chosen to pass Ext.P4 order as follows:-

“Proof affidavit is filed by plaintiff. Ext.A2 sought to be marked is an insufficiently stamped document and hence pay deficit stamp duty and 10 times penalty of the same. For payment to 13.3.15.”

2. Ext.P5 application was filed before the court below for modification of Ext.P4 order. The court below has chosen to pass Ext.P6 order on Ext.P5. Ext.P5 IA was seen filed for directing the petitioner to pay penalty at the rate of

20 times as against the 10 times originally fixed through Ext.P4 order. Through Ext.P6, the court below has, without any discussion, enhanced the penalty to 20 times.

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

4. It seems that in Ext.P4 order, the court below has not stated anything with regard to the nature of Ext.P2 document. The court below has not made it clear in Ext.P4 as to how the court below has arrived at the conclusion that the document is insufficiently stamped, without ascertaining the nature of the document. Solely on that ground, Ext.P4 is liable to be set aside.

5. Regarding Ext.P6, the learned counsel for the petitioner has pointed out that when a penal provision was invoked, the court below ought to have been more vigilant in passing an order like Ext.P6. The question as to whether the amendment of the Stamp Act will relate back and has retrospective operation has to be considered in the light of

Article 20 of the Constitution of India. When the said provision is to be considered as a penal provision, as rightly pointed out by the learned counsel for the petitioner, it cannot have retrospective operation at all. Those questions have not been considered by the court below. Matters being so, Ext.P6 also is liable to be set aside.

In the result, this O.P.(Civil) is allowed and Exts.P4 and P6 orders are set aside. The court below shall pass appropriate orders on those IAs in accordance with law.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/03/07

// True Copy //

PA to Judge