

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP(C).No. 1260 of 2015 (O)

OS 412/2012 OF II ADDL.SUB COURT, ERNAKULAM

PETITIONER(S):

- 1. M/S.SREEGOKULAM HOUSING CO.PVT.LTD,
SREEGOKULAM SPRING TOWER, MUTTAMBALAM PO, K.K.ROAD,
KANJIKUZH, KOTTAYAM-686 004,
REPRESENTED BY ITS MANAGING DIRECTOR MR.JIMMY GEORGE.**
- 2. MR.JIMMY GEORGE,
MANAGING DIRECTOR
M/S.SREEGOKULAM HOUSING CO.PVT.LTD,
SREEGOKULAM SPRING TOWER, MUTTAMBALAM PO, K.K.ROAD,
KANJIKUZH, KOTTAYAM-686 004.**

**BY ADVS.SMT.AYSHAMMA ABRAHAM
SRI.S.SARATH PRASAD**

RESPONDENT(S):

**M/S.COCHIN FIRE TECH INDIA PVT. LTD.
IST FLOOR, FIRE TECH HOUSE, K.K.ROAD,
KALOOR, KOCHI-682016,
REPRESENTED BY ITS MANAGING DIRECTOR,
MR.CLEMENT T.L.**

**BY ADVS. SRI.ANTONY MUKKATH
SRI.O.F.JUSTIN**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 :** A TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER IN APPEAL NO.13 OF 2014 BEFORE THE DISTRICT COURT (EDMALAYAR SPECIAL COURT)
- P2 :** A TRUE COPY OF EA 252 OF 2015 IN EP NO.20 OF 2015 FILED BEFORE THE ADDITIONAL SUB COURT-II, ERNAKULAM.
- P3 :** A TRUE COPY OF THE CHEQUE APPLICATION FILED BY THE RESPONDENT IN EP.NO.20 OF 2015 BEFORE THE ADDITIONAL SUB COURT-II, ERNAKULAM.
- P4 :** A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO EXT P3 CHEQUE APPLICATION IN EP NO.20 OF 2015 BEFORE THE ADDITIONAL SUB COURT-II, ERNAKULAM.

RESPONDENT(S)' EXHIBITS

- R1(A):** COPY OF THE ORDER DATED 9/4/15 IN EP.20/15 IN OS.412/12 OF THE IIND ADDITIONAL SUB COURT, ERNAKULAM.
- R1(B):** COPY OF THE ORDER DATED 11/6/15 IN IA.1460/15 IN AS.13/14 ON THE FILE OF THE COPY OF THE ORDER DATED 11/6/15 IN IA.1460/15 IN AS.13/14 ON THE FILE OF THE VTH ADDITIONAL DISTRICT COURT, ERNAKULAM
- R1(C):** COPY OF THE ORDER DATED 11/6/15 IN IA.3382/15 IN AS.13/14 ON THE FILE OF THE VTH ADDITIONAL DISTRICT COURT, ERNAKULAM
- R1(D):** COPY OF THE OBJECTION DATED 6/4/15 IN IA.241/15 IN EP.20/15 IN OS.412/12 OF THE 2ND ADDITIONAL SUB COURT.
- R1(E):** COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT IN IA.1460/15 IN AS.13/14 OF THE VTH ADDITIONAL DISTRICT COURT, ERNAKULA
- R1(F):** COPY OF THE IA.3382/15 IN AS.13/14 OF THE VTH ADDITIONAL DISTRICT COURT, ERNAKULAM.
- R1(G):** COPY OF THE COUNTER DATED 9/5/15
- R1(H):** COPY OF THE EA.313/15 IN EP.20/15 IN OS.412/12 OF THE 2ND ADDITIONAL SUB COURT, ERNAKULAM.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(C) No.1260 of 2015
.....

Dated this the 29th day of June, 2015

J U D G M E N T

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An EP was filed for the execution of a money decree against the petitioners. In the EP, the property of the petitioners was attached. The petitioners wanted to get the attachment lifted. They filed an EA in the EP stating that by way of a bond, they were ready to deposit the EP amount before the court below. They deposited the EP amount before the court below. It seems that the execution court allowed the EA filed by them and at the same time, closed the EP. The decree holder, who is the respondent herein, has filed cheque application, for the amount deposited by the petitioners, stating that the said amount has been deposited in discharge of the decree and the respondent is entitled to get the said amount withdrawn. The petitioners herein filed Ext.P4 objection in respect of the cheque

application.

2. In the meantime, an appeal was filed against the decree and an application for stay of execution was also filed. The said application was dismissed on the ground that the EP itself was closed and the EP amount was deposited. Again, another application was filed for getting an order of stay of execution. The same was also dismissed on the ground that EP was closed. It seems that the petitioners had not taken up an argument before the appellate court that the amount deposited by them was in lieu of security to be furnished for discharging the decree debt. A relief against the disbursement of the amount has also not been sought for. There is absolutely nothing to interfere with the orders passed by the appellate court at present, thereby refusing to pass an order of stay of execution. The appellate court is perfectly justified in passing the said orders as the EP is closed.

In the result, this OP(Civil) is disposed of with liberty to

the petitioner to move the appellate court for appropriate reliefs. The proceedings on the cheque application will stand stayed for two weeks from the date of receipt of the copy of this judgment.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/29/06

// True Copy //

PA to Judge