

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OP(C).No. 1506 of 2015 (O)

I.A.NO.936 OF 2015 IN O.S.NO.50 OF 2015 OF PRINCIPAL SUB COURT, KOLLAM

PETITIONER(S)/RESPONDENTS/DEFENDANTS :

- 1. PRASANNAKUMAR, AGED 58 YEARS,
S/O.NARAYANAN, PADMALAYAM, PATTATHANAM POST,
VATAKKEVILA VILLAGE, KOLLAM.**
- 2. M.MINI, AGED 58 YEARS,
W/O.PRASANNAKUMAR, PADMALAYAM, PATTATHANAM POST,
VATAKKEVILA VILLAGE, KOLLAM.**

**BY ADVS.SRI.K.RAKESH ROSHAN
SRI.BINU GEORGE
SMT.THUSHARA.V**

RESPONDENT(S)/PETITIONER/PLAINTIFF :

**DR.SHAHIR SHA, AGED 47 YEARS,
S/O.H.M.S.HAMEED, "HRIDAYAM", KARAVALLOOR POST,
PUNALLOOR, KOLLAM, PIN - 691 305.**

**BY ADVS. SRI.P.PRIJITH
SRI.A.JANI(KOLLAM)**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

OP(C).No. 1506 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S.NO.50/2015 ON THE FILE OF
THE PRINCIPAL SUB COURT, KOLLAM.**

**EXHIBIT P2: TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF THE PETITION
IN I.A.NO.936/2015 IN O.S.NO.50/2015 ON THE FILE OF
THE PRINCIPAL SUB COURT, KOLLAM.**

**EXHIBIT P3: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY PETITIONERS
IN I.A.NO.936/2015 IN O.S.NO.50/2015 ON THE FILE OF
THE PRINCIPAL SUB COURT, KOLLAM.**

**EXHIBIT P4: CERTIFIED COPY OF THE ORDER DATED 02.06.2015 IN
I.A.NO.936/2015 IN O.S.NO.50/2015 ON THE FILE OF THE PRINCIPAL
SUB COURT, KOLLAM.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

.....
O.P.(C) No.1506 of 2015

.....
Dated this the 1st day of July, 2015

J U D G M E N T

A contract of sale has been allegedly entered into between the parties. As the petitioners have failed to perform their part of contract, the respondent has filed the suit before the court below as a suit for specific performance of the contract. Alternatively a relief of recovery of the amount with interest, cost and damages have also been sought for. An application under Order XXXVIII Rule 5 was filed in the suit before the court below seeking an order of conditional attachment, as I.A.No.936/2015. Through Ext.P4, the court below has passed an order directing the petitioners to furnish security for 1,25,75,000/- or to show

cause as to why the order of attachment of the property in question should not be ordered. The petitioners are challenging the said order by which they are ordered to furnish security for ₹1,25,75,000/-.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

3. The learned counsel for the petitioners has argued that the part of consideration allegedly parted with is an amount of ₹42 lakhs only and therefore, the court below ought to have limited the amount for which security has to be furnished to an amount of ₹42 lakhs.

4. *Per contra*, the learned counsel for the respondent has pointed out that over and above the amount of ₹42 lakhs paid as part of consideration, the respondent had obtained a DD for an amount of ₹42 lakhs more to the petitioners for discharge of the debt in respect of DENA Bank, who is the 3rd defendant in the suit. The learned counsel for the petitioners disputed such a payment.

According to the learned counsel for the respondent, the said amount was paid through DD and the DD was obtained by the respondent herein. Even though the DD was produced before the Bank, who is the 3rd defendant, the Bank did not appropriate the amount as per the directions of the petitioners and therefore, the respondent has produced the said DD along with the suit before the court below. Over and above it, the petitioner has purchased stamp papers worth ₹7,50,000/- and also paid TDS for recovery of ₹ 1,25,75,000/- which was to be paid by the petitioners. It seems that the plaint claim is ₹1 crore with future interest.

5. When the plaint claim is for ₹1 crore, the court below ought to have limited the amount for which security to be furnished to ₹1 crore; but instead of that the court below has ordered security for ₹1,25,75,000/-. Matters being so, the said order can be modified by limiting the security to be furnished to an amount of ₹1 crore.

In the result, this Original Petition is allowed to the

O.P.(C) 1506 of 2015

-: 4 :-

extend of modifying Ext.P4 order by limiting the amount for which security to be furnished to ₹1 crore.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge