

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP(C) .No. 1672 of 2015 (O)

AGAINST THE ORDER IN E.A.NO.123/2015 IN EP NO.209/2014 DATED
28.3.2015 IN OS 651/2010 of PRL.SUB COURT, KOZHIKODE

PETITIONER/JUDGMENT DEBTOR/1ST DEFENDANT:

P.M. PARTHAKUMAR AGED 70 YEARS
S/O.LATE P.M.KUTTY, KACHERI AMSOM, DESOM
KOZHIKODE TALUK.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS/DECREE HOLDERS/PLAINTIFFS AND 2ND DEFENDANT:

1. AJITH VISWANATH, AGED 41 YEARS
S/O.LATE VISWANATHAN, DEEPTHI, 27/805
KUTHIRAVATTOM, KOZHIKODE 673 016.

2. SHRI ABDUL JALEEL, AGED 43 YEARS
S/O.LATE K.P.ABU, DEEPTHI APARTMENT, KUTHIRAVATTOM
KOZHIKODE 673 016.

3. SHRI.K.T.ABDURAHIMAN, AGED 63 YEARS
S/O.T.ALI, MUBINA MANZIL, PUTHIYOTTIL KADAVU
THALAKKULATHUR P.O. & AMSOM DESOM, KOZHIKODE TALUK
KOZHIKODE 673 317.

4. SHRI.K.P.VENUGOPALAN
PARAMBATHPARAMBIL, S/O.VELU, NAGARAM AMSOM DESOM
KOZHIKODE TALUK, KOZHIKODE - 673 002.

R1 BY ADV. SRI.R.RAMADAS

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS

P1: A TRUE COPY OF THE ORDER DATED 4/7/2014 IN I.A NO.1513/2014 IN R.F.A NO.466/2014 OF THE HON'BLE HIGH COURT OF KERALA

P2: A TRUE COPY OF E.P NO.209/2014 IN OS NO.651/2010 FILED BY THE PETITIONER HEREIN BEFORE THE SUB COURT, KOZHIKODE

P3: A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT TO E.A NO.123/2015 IN EP NO.209/2014 IN OS NO.651/2010 ON THE FILE OF THE SUB COURT, KOZHIKODE

P4: A PHOTOCOPY OF THE ORDER DATED 28/3/2015 IN E.A NO.123/2015 IN EP NO.209/2014 IN OS NO.651/2010 ON THE FILE OF THE SUB COURT, KOZHIKODE

P5: A TRUE COPY OF E.P NO.209/2014 IN OS NO.651/2010 FILED BY THE RESPONDENTS HEREIN BEFORE THE SUB COURT, KOZHIKODE.

P6: A TRUE COPY OF THE BANK GUARANTEE FOR RS.5,04,000/- SHOWING THAT THE BANK GUARANTEE HAS BEEN EXTENDED UPTO 24-1-2018

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

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Dated this the 19th day of October, 2015

JUDGMENT

Antony Dominic, J.

The challenge in this original petition is against Ext.P4 order passed by the Sub Court, Kozhikkode in E.A.No.123 of 2015 in E.P.No.209 of 2014 in O.S.No.651 of 2010. By the said order the Sub Court has directed the petitioner to furnish security to the tune of Rs.12,48,000/- (Rupees Twelve lakh forty eight thousand only).

2. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for respondents 1 to 3.

3. The background in which the order came to be passed is that in O.S.No.651 of 2010 the sub court has passed a decree against the first respondent which interalia entitles the decree holders to realise Rs.6,000/- (Rupees Six thousand only) per month from August 1997 towards mense profit. In R.F.A. No.466 of 2014 filed by the petitioner against the decree and judgment, this Court passed order dated 4.7.2014 granting stay on condition that he should furnish bank guarantee as security. Accordingly the petitioner furnished a bank guarantee for Rs.5,04,000/- (Rupees Five lakh four thousand only) before the trial court.

4. Subsequently on 21.1.2015 when R.F.A. No.466 of 2014 came up for extension of the interim order, respondents 1 to 3 herein raised a complaint that the decree debt was more than 13 lakhs and that the bank guarantee furnished was inadequate. Taking note of the submission made, this Court held that it is a matter to be considered by the trial court and the parties were given liberty to address the trial court on this issue. It is accordingly that the impugned order was passed by the trial court holding that the petitioner shall furnish security to the tune of Rs.12,48,000/- (Rupees Twelve lakh forty eight thousand only).

5. The contention raised by the petitioner is that in the execution petition filed by the decree holder, the amount sought to be realised is only Rs.83,785/- (Rupees Eighty three thousand seven hundred and eighty five only) and that therefore even the amount deposited is far in excess of what is sought to be realised. In our view this contention is plainly untenable. Under the decree impugned in R.F.A No.466 of 2014, the decree holders are entitled to realise Rs.6,000/- (Rupees Six thousand only) per month from the petitioner, the judgment debtor, towards mense profit. Therefore as at present, in the light of the order dated 4.7.2014 passed by this Court, the petitioner is bound to furnish bank guarantee for the amount due as security and it is that amount

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which is quantified by the Trial Court. The said condition can be complied with only if Rs.12,48,000/- (Rupees Twelve lakh forty eight thousand only) is deposited. We have no reason to think that this order suffers from any irregularity or illegality to be interfered with by this Court.

The original petition will therefore stand dismissed.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc