

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

OP(C).No. 1725 of 2015 (O)

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(AGAINST THE ISSUANCE OF WARRANT OF ARREST OF WITNESS IN
IA.NO.10760/2011 IN OS.NO.608/1999 PENDING BEFORE THE COURT OF THE
SUB JUDGE, THRISSUR)**

PETITIONER(S)/3RD DEFENDANT:

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K.T.KUMARI AGED 71 YEARS
W/O K.P. T. NAIUR, "USHAS", VIVATTOM VILLAGE
THRISSUR, PRESENTLY RESIDING AT SOPANAM, SREERAG LANE
PERINJAVU, THRISSUR-18**

**BY ADVS.SRI.SHYAM PADMAN
SRI.P.N.HARISH BABU
SRI.A.RANJITH NARAYANAN
SRI.S.K.SAJU
SRI.JOHN THITHEEMOS**

RESPONDENT(S)/DEFENDANT NO.1, PLAINTIFF AND DEFENDANT NO.2:

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1. T.K.GANGAN MENON
S/O P.K.K. MENON, KASABA AMSOM DESOM KOZHIKODE TALUK
CALICUT-32**

**2. M/S BRIGHT CERDITSAND REAL ESTATW PVT.LTD
RICE BAZAR, CHEMBUKAVE VILLAGE
THRISUR REPRESENTED BY DIRECTOR 680 020**

**3. K. JAYARAJ
S/O VELAYUDHAN NAIR, USHAS, VIVATTOM VILLAGE
THRISSUR 680 631**

**R1 BY ADV. SRI.K.RAMACHANDRAN
R1 BY ADV. SMT.M.C.BINDUMOL
R2 BY ADV. SRI.N.SUBRAMANIAM
R2 BY ADV. SRI.M.S.NARAYANAN
R2 BY ADV. SRI.P.T.GIRIJAN
R2 BY ADV. SMT.USHA NARAYANAN**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF I.A.NO. 10760/11 IN OS NO 608/99 DT. 20/11/11

EXT.P2; TRUE COPY OF THE WARRANT OF ARREST OF WITNES DT. 29/6/15

EXT.P3: TRUE COPY OF THE PROCEEDINGS IN IA NP 10760/11 IN OS NO. 608/99

RESPONDENT(S)' EXHIBITS

EXT.R1(A)- TRUE COPY OF THE ORDER DATED 27.10.2010 IN IA.9057/2010 IN OS.608/1999 OF THE SUB COURT, THRISSUR.

EXT.R1(B)-TRUE COPY OF THE ORDER DATED 2.10.2011 IN RIA (APPEAL) NO.22/2011 OF THE REGISTRAR GENERAL OF THIS HON'BLE COURT.

EXT.R1(C)-TRUE COPY OF THE NOTICE DATED 11.9.2013 ISSUED IN IA.10760/2011 IN OS.608/1999 OF THE SUB COURT, THRISSUR.

EXT.RA(D)- TRUE COPY OF THE STATEMENT DATED 17.7.2015 SUBMITTED BY COUNSEL FOR 3RD RESPONDENT IN OS.608/1999 OF THE SUB COURT, THRISSUR.

R.AV

//True Copy//

PA to Judge

K. ABRAHAM MATHEW, J.

O.P.(C)No.1725 of 2015

Dated this the 12th day of November, 2015

J U D G M E N T

Petitioner is the third defendant in OS.608 of 1999 on the file of Sub Judge, Thrissur. The suit is filed by the second respondent for realisation of money. The first and third respondents are the co-defendants of the petitioner. The petitioner produced some documents. It is alleged that the original documents produced in the court are missing. The first respondent filed the IA.10760 of 2011 under Section 340 Cr.P.C against the petitioner and the second and third respondents. The learned Sub Judge posted the IA for inquiry. The petitioner did not appear in spite of the summons served on her. Thereupon, the learned Sub Judge issued an arrest warrant against her and also attached her properties. This is challenged in this O.P.

2. Heard.

3. Ext.P1 is the petition filed by the first

respondent under Section 340 Cr.P.C. It is quite difficult to make head or tail of it. The learned Sub Judge should have first heard about the maintainability of the application. He also should have considered the procedure to be adopted when one of the respondents in the application filed under Section 340 Cr.P.C. did not appear. Under Section 340 Cr.P.C it is necessary for the learned Sub Judge to conduct a preliminary enquiry . Even without conducting a preliminary enquiry the learned Sub Judge issued arrest warrant against the petitioner and attached her properties merely because she did not take part in the proceedings. This is patently illegal. The order is liable set aside.

4. The learned Sub Judge shall first hear all the parties with regard to the maintainability of Ext.P1 application and thereafter, if necessary, give an opportunity to the petitioner to file an objection if she is so advised. Then, the court shall conduct a preliminary enquiry as contemplated by Section 340 Cr.P.C. The procedure adopted by the learned Sub Judge is completely wrong. It is made clear that the pendency of Ext.P1

application shall not be an impediment for the court to proceed with the trial of the suit, which shall be expedited.

In the result, this OP is allowed. The proceedings initiated against the petitioner in Ext.P1 application are set aside. The learned Sub Judge shall comply with the directions given above. It is made clear that the learned Sub Judge shall proceed with the trial of the suit notwithstanding the pendency of Ext.P1 application. The suit shall be disposed of within six months from the date of receipt or production of a copy of this judgment.

sd/-

**K. ABRAHAM MATHEW
JUDGE**

R.AV

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PA to Judge