

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

OP(C).No. 1753 of 2015 (O)

PETITIONER(S) :

**SATHISH.K., AGED 46 YEARS,
S/O.LATE KUNJAN, RESIDING AT CHORAMKULAM HOUSE,
CHITTILAMCHERRY POST, PALAKKAD 678 704.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENT(S):

**STATE BANK OF INDIA,
PALAKKAD BRANCH
REPRESENTED BY ITS ASSISTANT GENERAL MANAGER,
RASMECCC, EC ROAD, PALAKKAD.**

BY SRI.S.EASWARAN

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 28-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMV

OP(C).No. 1753 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF EP.NO.169/2013 IN OS.NO.635/2009 ON THE FILE OF THE COURT OF THE PRINCIPAL SUB COURT, PALAKKAD DATED 15.06.2013.**
- P2: COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN EXT P1 DATED 21.02.2014.**
- P3: COPY OF THE ORDER IN EP.NO.169/2013 IN OS.NO.635/2009 ON THE FILE OF THE COURT OF THE PRINCIPAL SUB COURT, PALAKKAD DATED 02.06.2015.**
- P4: COPY OF THE SALARY CERTIFICATE OBTAINED BY THE PETITIONER IN THE MONTH OF JUNE, 2015 DATED 09.06.2015.**

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

SUNIL THOMAS, J.

.....
O.P.(C) No. 1753 of 2015 (O)

.....
Dated this the 28th day of July, 2015

JUDGMENT

The petitioner challenges Ext.P3 order dated 02.06.2015 by which warrant was ordered to be issued to the petitioner in execution of a money decree, after conducting enquiry regarding his means to discharge the decree debt.

2.The court below relied on a salary certificate on the side of decree holder and ultimately concluded that he has got the sufficient means to pay off the decree debt. Evidently, the court below was well grounded on its conclusion, prima facie to issue warrant under Order XXI Rule 37 of Code of Civil Procedure. I find no legal ground to interfere in this order under Article 227 of the Constitution of India.

3.However, the learned counsel for the petitioner relied on Ext.P4 salary certificate dated 09.06.2015, to show that the take home salary of judgment debtor was less. Evidently this document was not available when the court conducted the enquiry under Order XXI Rule 37 of CPC. Evidently it is a subsequent document. On the basis of the above, I feel that some breathing time can be granted to the petitioner, and to

enable the court below to re-consider the order in the light of salary certificate dated 09.06.2015; however, subject to the condition that he deposits a sum of Rs.25,000/- within one month from today.

4. In the result, this original petition will stand allowed and the impugned order will stand set aside, on condition that the petitioner will remit a sum of ₹25,000/- (Rupees Twenty five thousand only) before the executing court within one month from today, failing which the order impugned will stand confirmed. On such deposit, the court shall post the execution petition for enquiry and shall permit both sides to adduce evidence regarding the means afresh, and thereafter, proceed in accordance with law.

It is made clear that none of the observations made herein above shall affect the findings of the court below, in the subsequent proceedings.

Sd/-
SUNIL THOMAS, JUDGE