

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

OP(C).No. 1855 of 2015 (O)

**I.A.NO.4394/2014 IN I.A.NO.2897/2014 IN I.A.NO.4804/2013 IN O.S.NO.66 OF 2007
OF II ADDITIONAL SUB COURT, KOZHIKODE**

PETITIONER(S) :

- 1. VENKALATH RAVEENDRAN, AGED 68 YEARS,
S/O.DR. PARAN, VENKALATH HOUSE, KASABA AMSOM AND DESOM,
KOZHIKODE TALUK - 673 002.**
- 2. DR.VENKALATH PRABHAKARAN, AGED 61 YEARS,
S/O.DR. PARAN, VENKALATH HOUSE, KASABA AMSOM AND DESOM,
KOZHIKODE TALUK - 673 002.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)**

RESPONDENT(S) :

- 1. FAIZAL EROTH, AGED 44 YEARS,
S/O.EROTH MOOSA HAJI, 17/568, CHINTHAVALAPPU FLAT,
KASABA AMSOM, KARIKKUNNU DESOM,
KOZHIKODE TALUK - 673 002**
- 2. ABDUL ROUF, AGED 39 YEARS,
S/O.KHATHIM, RESIDING AT ID SKYLINE, MARINE GATE,
NEAR CORPORATION OFFICE, NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK - 673 011.**

BY ADV. SRI.E.NARAYANAN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: DATED 05.09.2013 A TRUE COPY OF I.A.NO.4804 OF 2013 ON THE FILE OF THE 2ND ADDITIONAL SUB JUDGE, KOZHIKODE.

EXHIBIT P2: DATED 28.05.2014 A TRUE COPY OF THE COMMISSION REPORT AND PLAN FILED BY THE ADVOCATE COMMISSIONER IN O.S.NO.66 OF 2007 ON THE FILE OF THE SUB COURT.

EXHIBIT P3: DATED 29.07.2014 A TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF THE I.A.NO.2897 OF 2014 IN I.A.NO.4804 OF 2013 IN O.S.NO.66 OF 2007 ON THE FILE OF THE 2ND ADDITIONAL SUB COURT, KOZHIKODE.

EXHIBIT P4: DATED 23.09.2014 A TRUE COPY OF THE COUNTER AFFIDAVIT FILED ALONG WITH I.A.NO.2897 OF 2014.

EXHIBIT P5: DATED 23.09.2014 A TRUE COPY OF THE I.A.NO.3606 OF 2014 IN O.S.NO.66 OF 2007.

EXHIBIT P6: DATED 05.11.2014 A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENTS IN I.A.NO.3606 OF 2014 IN O.S.NO.66 OF 2007.

EXHIBIT P7: DATED 06.11.2014 A TRUE COPY OF THE I.A.NO.4394 OF 2014 IN I.A.NO.2897 OF 2014 IN I.A.NO.4804 OF 2014 IN O.S.NO.66 OF 2007.

EXHIBIT P8: DATED 10.07.2015 A TRUE COPY OF THE ORDER PASSED BY THE LEARNED SUBORDINATE JUDGE, KOZHIKODE, IN I.A.NO.4394 OF 2014 IN I.A.NO.2897 OF 2014 IN I.A.NO.4804 OF 2014 IN O.S.NO.66 OF 2007.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
O.P.(C) No.1855 of 2015
.....

Dated this the 6th day of August, 2015

J U D G M E N T

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In a suit for specific performance of a contract, an application under Section 28(1) of the Specific Relief Act was filed by the defendants, who are the petitioners herein. An application for getting the Commissioner's report remitted was filed by the plaintiffs. On the date of which the said matters stood posted for hearing, the learned counsel for the petitioners could not represent and consequently, the application filed by the petitioners under Section 28(1) of the Specific Relief Act was dismissed and the petition filed by the plaintiff for getting the Commissioner's report remitted, was allowed.

2. Subsequently, the petitioners had filed an application for the restoration of the application under Section 28(1) of the Specific Relief Act and for reviewing the order passed by the court below on the application filed by the plaintiffs for getting the Commissioner's report remitted. The application filed under

Section 28(1) of the Specific Relief Act was restored by the court below whereas, the application for review of the other order was dismissed.

3. Heard learned counsel for the petitioners and learned counsel for the respondents.

4. When the court below has found that there is sufficient reason for the restoration of the application filed under Section 28(1) of the Specific Relief Act, the court below ought to have considered the other application filed by the plaintiffs also on merits. Ext.P8 order has to be set aside and the order has to be remitted. The court below shall hear both sides and take appropriate decision on the application filed by the plaintiffs for getting the Commissioner's report remitted, on merits.

In the result, this O.P.(Civil) is allowed as above.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/06/08

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PA to Judge