

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

O.P.(C).No. 1859 of 2015 (O)

**AGAINST THE ORDER DATED 02.12.2014 IN I.A. No.1038 OF 2014 IN O.S. No.47/2014
ON THE FILES OF THE SUB COURT, MANJERI**

PETITIONER/DEFENDANT:

**ABDUL RASACK,/O PUTHIYATH AHAMMEDKUTTY,
PUTHIYATH HOUSE, (HIRA GOLD), KUZHIMANNA P.O.,
ERANAD TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI. U.K.DEVIDAS

RESPONDENT/PLAINTIFF:

**ABDUL KAREEM.P.C., AGED 46 YEARS,
S/O. MUHAMMED, PATHUVEETIL HOUSE, THRIPPAJNACHI DESOM,
ERANAD TALUK, MALAPPURAM DISTRICT - 673 641.**

BY ADV. SRI. BABU S. NAIR

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF THE I.A.No.1038/14 IN O.S.No.47/2014 OF SUB COURT, MANJERI.

EXHIBIT P2: COPY OF THE COUNTER STATEMENT IN I.A.No.1038/2014.

EXHIBIT P3: COPY OF THE VALUATION REPORT DATED 11.09.2014.

EXHIBIT P4: COPY OF THE RECEIPT FOR ISSUE OF LOAN APPLICATION FORM DATED 09.09.2014.

EXHIBIT P5: COPY OF THE RECEIPT DATED 15.09.2014 ISSUED BY MANJERI CO-OPERATIVE URBAN BANK LTD. FOR LEGAL SCRUTINY FEE.

EXHIBIT P6: COPY OF THE RECEIPT DATED 15.9.2014 ISSUED BY MANJERI CO-OPERATIVE URBAN BANK LTD. FOR VALUATION FEE.

EXHIBIT P7: COPY OF THE RECEIPT DATED 15.09.2014 ISSUED BY MANJERI CO-OPERATIVE URBAN BANK LTD. FOR SHARE.

EXHIBIT P8: COPY OF THE ORDER DATED 02.12.2014 IN I.A.No.1038/2014 IN O.S.No.47/2014 OF SUB COURT, MANJERI.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C). No. 1859 of 2015

Dated this the 2nd day of November, 2015

JUDGMENT

Petitioner is the defendant in O.S.No.47/2014 of Sub Court, Manjery. His property was attached under Order 38 Rule 5 CPC. He filed an objection as seen from Ext.P1. By Ext.P8 order, the learned Sub Judge has closed the application for attachment. This is challenged.

2. Heard.

3. It is very surprising that the learned Sub Judge who is in experienced as Judicial officer has passed a one line order, even without taking into consideration any of the contentions raised by the petitioner in his objection. The impugned order is not a speaking order. On that ground alone the order is liable to be set aside. It is also pertinent to note that when the attachment application is closed an order has to be passed making the interim order

absolute. This also has not been done. The learned Sub Judge is directed to take notice of the relevant provisions in the CPC and pass an appropriate order on merits.

In the result, this original petition is allowed. Ext.P8 order is set aside. Learned Sub Judge is directed to pass an order on merits after hearing both sides within two weeks from the date of receipt or production of a copy of this judgment.

Sd/-
K. ABRAHAM MATHEW
JUDGE

ww/04/11/2015