

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

OP(C).No. 1894 of 2015 (O)

**AGAINST THE ORDER IN EA NO. 97/2015 IN EP NO. 4/2015 IN OS.NO. 58/2013
OF SUB COURT, PALA DATED 23.07.2015**

PETITIONER :

**STANLY MATHEW
S/O. MATHEW, THATTAMPARAMBIL HOUSE,
TEEKOY P.O.**

**BY ADVS.SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI.GEORGE PULIKUTHIYIL**

RESPONDENT :

**P.S. ANTONY
S/O. SCARIA, PUTHANPRA NELLIVELI,
TEEKOY P.O., PIN-686 580.**

**BY ADVS. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 23-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 : TRUE PHOTOCOPY OF THE EXECUTION PETITION NO.4/2015 FILED BY THE RESPONDENT.
- EXT. P2 : TRUE PHOTOCOPY OF THE OBJECTIONS DTD.18.3.2015 SUBMITTED BY THE PETITIONER.
- EXT. P3 : TRUE PHOTOCOPY OF THE PETITION FOR AMENDMENT OF EXECUTION PETITION (EA NO.97/2015) DTD.10.7.2015.
- EXT. P4 : TRUE PHOTOCOPY OF THE OBJECTIONS DTD.23.7.2015 FILED BY THE PETITIONER.
- EXT. P5 : TRUE PHOTOCOPY OF THE ORDER DTD.23.7.2015 IN EA NO.97/2015 IN EP NO.4/2015 IN OS NO.58/2013 OF THE SUB COURT, PALA.

RESPONDENT(S)' EXHIBITS :

- EXT. R1(a) COPY OF AWARD PASSED BY THE LOK ADALAT ON 1.8.13 IN OS NO. 58/13.
- EXT. R1(b) COPY OF FIXED DEPOSIT RECEIPT BEARING NOS. 22130 DATED 8.7.15.
- EXT. R1(c) COPY OF FIXED DEPOSIT RECEIPT BEARING NOS. 22131 DATED 8.7.15.
- EXT. R1(d) COPY OF FIXED DEPOSIT RECEIPT BEARING NOS. 22132 DATED 8.7.15.
- EXT. R1(e) COPY OF FIXED DEPOSIT RECEIPT BEARING NOS. 22133 DATED 8.7.15.
- EXT. R1(f) COPY OF FIXED DEPOSIT RECEIPT BEARING NOS. 22137 DATED 9.7.15.
- EXT. R1(g) COPY OF FIXED DEPOSIT RECEIPT BEARING NOS. 22138 DATED 9.7.15.
- EXT. R1(h) COPY OF MEMO FILED BY RESPONDENT BEFORE LOWER COURT ON 10.7.15.

//TRUE COPY//

P.A. TO JUDGE

Mn

K. ABRAHAM MATHEW, J.

O.P.(C)No.1894 of 2015

Dated this the 23rd day of September, 2015

J U D G M E N T

Petitioner is the judgment debtor in EP.NO.4/2015 in O.S.No.58 of 2013 on the file of Sub Court, Pala. He was a lessee of the plaint schedule property. The suit was disposed of on the basis of a compromise. The compromise decree, Ext.R1(a) proves that the petitioner undertook to vacate the property by 31.12.2014 and to pay arrears of rent from February 2013 within one month. The decree holder undertook to pay back Rs.2,50,000/- (Rupees Two lakhs fifty thousand only) he had received as security when the judgment debtor vacates the property. In the original EP there was no prayer for recovery of the arrears of rent. His only prayer was for recovery of possession. Later the decree holder filed Ext.P3 application to amend the EP so that he may incorporate the prayer for adjustment of the amounts due from each party. This was objected to by the petitioner/judgment debtor as seen from Ext.P4. BY

Ext.P5 order the learned Sub Judge overruled the objection and directed amendment of the EP. This is challenged in this O.P.

2. Heard.

3. I do not find anything wrong in the impugned order. The respondent/deedee holder omitted to make the prayer for recovery of arrears of rent. In fact, the objection is that there was payment of a certain amount towards the deedee debt. Is a matter to be decided after the amendment. It is also pertinent to note that under Order 21 Rule 2 Sub Rule 2(A) C.P.C the court shall not take notice of any payment or adjustment unless it is proved by documentary evidence. The petitioner/judgment debtor has no case that the discharge pleaded by him is evidenced by documents. In the objection to the EP he prayed for six months time to vacate the property. That six months is already over. Even now he is not ready to vacate the building. It is also significant that the respondent has produced before the executing court fixed deposit receipts for Rs.2,50,000/- (Rupees Two lakhs fifty thousand only). The executing court shall also take notice

of the provision in Order 21 Rule 19 C.P.C by which the parties can adjust the amounts. I do not find any merit in the O.P.

In the result, this O.P. is dismissed. The executing court shall effect delivery forthwith.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge