

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

OP(C).No. 1923 of 2015 (O)

E.A.NO.466/2014 IN E.P.NO.260/2014 OF ADDL.DISTRICT COURT-II, KASARAGOD

PETITIONER(S)/(JUDGEMENT DEBTORS):

- 1. SABU MATHEW,S/O.MATHEW, AGED 54 YEARS,
KALARIKKAL HOUSE,BEEMAMADY P.O.,
NEELESWARAM (VIA), HOSDURG TALUK,
KASARAGOD.**
- 2. RAMESHAN .K, S/O.KUNHAPPAN O.N.,AGED 52 YEARS,
OZHUKAYIL HOUSE, VELLARIKUNDU P.O.,
PARAPPA (VIA), HOSDURG TALUK, KASARAGOD.**

**BY SRI.T.SETHUMADHAVAN,SENIOR ADVOCATE
ADVS. SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON**

RESPONDENT/(DECREE HOLDER):

**SHRIRAM TRANSPORT FINANCE COMPANY LTD.,
KASARAGOD BRANCH, KASARAGOD - 671 121.**

BY ADV. SRI.RAJESH NAMBIAR

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 1923 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE PROCEEDINGS RECORDED BEFORE COURT
BELOW IN E.P.240/14.

EXT.P-2: TRUE COPY OF E.A. NO.466/2014 IN E.P NO.260/2014 DATED 15.12.2014

EXT.P-3: TRUE COPY OF COUNTER DT. 15.12.14 FILED IN EXECUTION PETITION
(EP 260/2014)

EXT.P-4: TRUE COPY OF THE PROCEEDINGS BEFORE THE COURT BELOW

EXT.P-5: TRUE COPY OF THE PROCEEDINGS IN E.A. NO.466/2014

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

K.ABRAHAM MATHEW J.

O.P.(C) No.1923 of 2015

Dated this the 30th day of October, 2015

JUDGMENT

Petitioners are the Judgment debtors in E.P.No.260 of 2014 of Additional District Judge-II, Kasaragod. They were issued notice by the District Judge under Order 21 Rule 37 of the Code of Civil Procedure to appear on 17.11.2014 before the Additional District Judge-II, Kasaragode. On 17.11.2014 the II Additional District Court made the following entry in the proceeding sheet:

“R1 and R2 served. Name called absent.
Set ex parte. Issue warrant to R1 and R2.
Deposit batta within three days. Posted to
16.12.2014”.

Later the 1st petitioner was arrested and produced before the court. He deposited Rs.25,000/-. He was released on bond for appearance. Thereafter, he failed to appear. Now the court has ordered his arrest. The counsel for the petitioners filed Ext P2 application to set aside the ex parte order. It is submitted that on the same day they filed Ext P3 objection to the notice pleading no means. The prayer in this Original Petition is to allow Ext P2 application.

2. Heard.

3. When a judgment debtor who has been served with notice under Order 21 Rule 37 of the Code of Civil Procedure fails to appear, he cannot be set ex parte. The proper course is to issue an arrest warrant against him to secure his presence for the purpose of

enquiry. So the endorsement of the learned District Judge that the judgment debtors were set ex parte is wrong, but the subsequent procedure adopted by him appears to be correct. Ext P2 application need not be set aside. The petitioners have every right to take part in the proceedings. Now that they have filed an objection raising the contention of no means, the District Judge has necessarily to post it for evidence.

In the result, this Original Petition is disposed of with a direction to the learned District Judge to post the case for the evidence of the respondent as to the means of the petitioners who shall be allowed to take part in the proceedings.

Sd/-
K.ABRAHAM MATHEW
JUDGE

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/True copy/

P.S.to Judge