

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

OP(C).No. 2561 of 2015 (O)

OS.NO.365/2010 OF 2ND ADDITIONAL SUB COURT, ERNAKULAM.

PETITIONER/DECREEHOLDER/PLAINTIFF:

**MARY MATHAI, W/O. MATHAI, AGED 67 YEARS,
RESIDING AT PUTHENVEETIL HOUSE,
VADAVATHOOR P.O., VIJAYAPURAM VILLAGE,
KOTTAYAM DISTRICT, REPRESENTED BY POWER
OF ATTORNEY HOLDER SHIBU MATHEW, AGED 52 YEARS,
RESIDING AT PUTHENVEETIL HOUSE, VADAVATHOOR P.O.,
VIJAYAPURAM VILLAGE, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.JOHN MATHEW (THEREZHATH)
SRI.JOBIN JOHN**

RESPONDENT(S)/JUDGMENT DEBTORS/DEFENDANTS :

- 1. BETRONS BUILDERS PVT. LTD., 28/986A,
BETRONS HOUSE, PONNETH TEMPLE ROAD,
KADAVANTHRA, KOCHI - 682 020,
REPRESENTED BY ITS MANAGING DIRECTOR,
SEBASTIAN.**
- 2. SEBASTIAN, AGED 52 YEARS,
BETRONS BUILDERS PVT.LTD., 28/986A,
BETRONS HOUSE, PONNETH TEMPLE ROAD,
KADAVANTHRA, KOCHI - 682 020.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 : THE TRUE COPY OF POWER OF ATTORNEY DTD.5.10.2015 EXECUTED BY MARY MATHAI IN FAVOUR OF MR.SHIBU MATHEW OF PUTHENVEETIL HOUSE.
- P2 : THE TRUE COPY OF THE DECREE PASSED BY IIND ADDITIONAL SUB COURT, ERNAKULAM, DTD.11.2.2011.
- P3 : THE TRUE COPY OF THE JUDGMENT PASSED BY IIND ADDITIONAL SUB COURT, ERNAKULAM, DTD.11.2.2011.
- P4 : THE TRUE COPY OF THE SALE DEED BEARING NO.967/2007 OF PUTHENCruz SRO.
- P5 : THE TRUE COPY OF THE EXECUTION PETITION FILED BEFORE THE IIND ADDITIONAL SUB COURT, ERNAKULAM AS EP NO.213/2015 DTD.20.10.2015.
- P6 : THE TRUE COPY OF THE EXECUTION APPLICATION FOR ATTACHMENT AS EA NO.788/2015 DTD.20.10.2015.
- P7 : THE TRUE COPY OF APPLICATION TO DISPENSE WITH THE ISSUANCE OF RULE 22 NOTICE AS EA NO.789/2015 DTD.20.10.2015.
- P8 : THE TRUE COPY OF IMPUGNED ORDER DTD.20.10.2015 PASSED BY IIND ADDITIONAL SUB JUDGE, ERNAKULAM.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

K.ABRAHAM MATHEW, J

O.P.(C)NO.2561 OF 2015

Dated this the 27th day of October, 2015

J U D G M E N T

Petitioner is the decree holder in EP.213 of 2015. Earlier she had filed EP.179 of 2012 in which a property was attached. Later, the EP happened to be dismissed. After more than two years she filed the present EP with a request to dispense with notice under Order 21 Rule 22 CPC to attach another property before notice was issued under the said provision. By the impugned order the learned Sub Judge has dismissed it. The petitioner is aggrieved by it.

2. Heard.

3. The Petitioner's case is that in the earlier EP though a property was attached she later realised that the JD has no interest in it, which is why she did not proceed with the execution. She has filed the present EP on coming to know about a property in which the respondents have interest. The learned Sub Judge has dismissed EA 789 of 2015 filed by her to dispense with notice under Order 21 Rule 22 of CPC. stating that she should have

taken steps to restore the earlier execution petition. The court cannot insist on a decree holder to file an application to restore the EP dismissed. The decree holder has every right to file any number of execution petitions within the period of limitation.

The facts of the case incline me to order attachment of the property before notice is issued under Order 21 Rule 22 of CPC. The property sought to be attached shall be attached by the executing court and proceed with the E.P.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge