

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

OP(C).No. 2866 of 2015 (O)

EP.NO.132/2009 IN OS.NO.248/2005 OF ADDITIONAL SUB COURT, N.PARAVUR.

PETITIONER:

**VENUGOPAL, AGED 65, S/O.RAMAN,
ODASSERY HOUSE, CHERAI KARA,
PALLIPPURAM VILLAGE, CHERAI.P.O.,
ERNAKULAM DIST., PIN - 683 514.**

BY ADV. SRI.V.A.PRADEEP KUMAR

RESPONDENT(S):

- 1. GOLDWIN KURIES,
REPRESENTED BY MANAGING PARTNER,
RADHAKRISHNAN, S/O.KOCHUNNI,
KURIPPILLYSSE HOUSE, CHERAI KARA,
PALLIPPURAM VILLAGE,
ERNAKULAM DISTRICT, PIN - 683 514.**
- 2. VIJAYAN, AGED 50, S/O.BABU,
ODASSERIL HOUSE, CHERAI KARA,
CHERAI.P.O., ERNAKULAM, PIN 683 514.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 26-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE E.P.NO.132/2009 IN OS.NO.248/2005 FILED BEFORE THE ADDITIONAL SUB COURT, N.PARAVUR.
- EXT. P2 : TRUE COPY OF THE AFFIDAVIT FILED BY THE 1ST RESPONDENT IN EP.NO.132/2009 IN OS.NO.248/2005 ON THE FILE OF THE SUB COURT, N. PARAVUR DATED 20.1.2015.
- EXT. P3 : TRUE COPY OF THE COUNTER AFFIDAVIT IN EP.NO.132/2009 IN OS.NO.248/2005 ON THE FILE OF THE SUB COURT, NORTH PARAVUR DATED 24.2.2015.
- EXT. P4 : TRUE COPY OF THE ORDER IN EP.NO.730/2014 IN EP.NO.132/2009 IN OS.NO.248/2005.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K.ABRAHAM MATHEW J.

O.P.(C) No.2866 of 2015

Dated this the 26th day of November, 2015

JUDGMENT

Petitioner is the first judgment debtor in O.S.No.248 of 2005 of Additional Sub Court, North Parur. The decree is for realisation of money. In E.P.No.132 of 2009 a notice under Order 21 Rule 37 of the Code of Civil Procedure was issued to him. He pleaded no means. The respondent-decree holder adduced evidence to prove his means. The executing court found that the petitioner has means to pay the debt. Accordingly, he passed the following order as seen from Ext P4: "The prayer of the decree holder to issue arrest warrant is allowed". This is challenged.

2. Heard.

3. Ext P4 order appears to be incomplete. The learned Sub Judge should have passed an order for detention of the judgment debtor who has been found to have the means to pay the debt. The period of detention also should have been mentioned. It is necessary to issue a direction to the Sub Judge to complete the order.

In the result, this Original Petition is disposed of. The learned Sub Judge is directed to correct the mistake in Ext P4 order. After the Sub Judge has passed appropriate order the petitioner may challenge it. It is made clear that the impugned order is not executable.

Sd/-
K.ABRAHAM MATHEW
JUDGE

cms

/True copy/

P.S.to Judge

H/o.