

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

OP(C).No. 1736 of 2014 (O)

**AGAINST THE ORDER IN EP 212/2012 IN UNNUMBERED OP (ARBITRATION) OF 2012 OF
DISTRICT COURT,ERNAKULAM DATED 03-07-2014
PETITIONER/DECREE HOLDER:**

**SANTHA PAUL, AGED 62 YEARS
W/O.OOMMEN PANICKER, RESIDING AT TOPS MANOR, PANAVELI
VETTIKAVALA, KOTTARAKRA.**

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENT/JUDGMENT DEBTOR:

**K.A.GEORGE, AGED 55 YEARS
S/O.KANNAT ABRAHAM, RESIDING AT KANNATTU NADUVIL,
KULATHUR, CHULAZHI
TALIPARAMBA.**

BY ADV. SRI.VARGHESE C.KURIAKOSE

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-06-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 1736 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. PHOTOCOPY OF SETTLEMENT AGREEMENT DATED 24/10/2011.

EXT.P2. PHOTOCOPY OF THE ORDER DATED 3RD JULY 2014 IN EP NO.212/2012.

EXT.P3. PHOTOCOPY OF BANK CERTIFICATE DATED 28.8.2014 ISSUED TO PETITIONER'S PARTNERSHIP - TOP CONSTRUCTIONS

RESPONDENT'S EXHIBITS

EXT.R(1)(a) TRUE PHOTOSTAT COPY OF CHEQUE ISSUED BY THE PETITIONER IN FAVOUR OF THE RESPONDENT

EXT.R(1)(b) TRUE PHOTOSTAT COPY OF DISHONOUR MEMO ISSUED BY FEDERAL BANK LTD.

EXT.R(1)(c) TRUE PHOTOSTAT COPY OF REPLY NOTICE ISSUED BY ADV. C. VARGHESE KURIAKOSE TO ADV. M. NARENDRAKUMAR

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

O.P.(C)No.1736 of 2014

Dated this the 19th day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

The order impugned in this O.P. is one dated 3.7.2014 in E.P.No.212/2012 in unnumbered O.P.(Arbitration) of 2012. The petitioner herein is challenging the impugned order on the ground that the refusal of the court below to proceed with the execution and the view taken that the execution petition is not maintainable is not correct. The background of the case is the following:

2. The petitioner had filed O.S.No.693/2009 before the Sub Court, Ernakulam and after dismissal of the same an appeal had been filed before this Court as RFA No.196/2011. It is the averment in paragraph No.9 of the O.P.(C) that after the appeal was filed conciliation was commenced between the parties and this resulted in Ex.P1

settlement agreement. After the settlement agreement was entered into between the parties, according to the petitioner execution petition was filed as E.P.No.212/2012 under Order 21 Rule 10 and 11 of the Code of Civil Procedure and as provided under Section 36 of the Arbitration and Conciliation Act. The execution court has dismissed the petition.

3. We heard the learned counsel for the petitioner Sri.S.A.Razzak and the learned counsel for the respondents Sri. C. Varghese Kuriakose.

4. Both sides have led arguments on various aspects. According to us, at this stage this Court need not go into the merits of the contentions of both sides since the execution court has not gone into such various aspects while passing the impugned order. The only issue that we have to consider is the legality of the view taken in paragraph 10 of the order. It is stated therein that the conciliation process was initiated while RFA No.196/2011 was pending before this Court. It is also stated therein that when the appeal

was pending such parallel proceedings are not possible in view of the provisions of Section 77 of the said Act. It is observed by the learned Judge that the proceedings should have been initiated with the consent of this Court. It is also stated that after the settlement agreement was entered into it should have been reported before this Court to get the R.F.A.No.196/2011 disposed of. Finally noticing that the RFA is pending it has been held that while the proceedings before this Court are pending the settlement agreement cannot be enforced now. It can also be seen from paragraph 11 that the learned Judge was of the view that even though several other contentions have been raised by the judgment debtor which are regarding legality of settlement agreement since R.F.A.No.196/2011 is pending, deciding the question regarding legality and validity of the settlement award in this proceedings now is impermissible. Accordingly it was held that settlement award is not liable to be enforced at this stage and hence the Execution Petition is liable to be dismissed.

5. A resume of the contents of the above two paragraphs will definitely show that the execution court has not gone into the merits of the various contentions raised by both sides. Therefore even though the learned counsel on both sides raised arguments on various aspects, according to us, all those contentions will have to be considered by the execution court itself. Learned counsel for the petitioner Sri.S.A.Razzak submitted that this Court can hold that the settlement is valid in the light of Section 73 of the Act and it can be enforced under Section 36 of the Act. Learned counsel for the respondents Sri. C. Varghese Kuriakose submitted that the agreement produced by the petitioner cannot be termed as a settlement agreement and he has got various contentions in the matter.

6. It is evident that the execution petition was filed by the petitioner on the plea that it is an enforceable decree. It is incumbent on the court to consider the objections, if any, with regard to its enforcement and other related aspects. Therefore, it will be too premature for this court to

pronounce finally on all those matters. We have noticed that the major impediment, referred to by the execution court was the pendency of R.F.A.No.196/2011, which we have today disposed of by a separate judgment. Therefore, we set aside the order impugned and vacate all observations and leave open all other questions to be considered by the execution court.

7. It is pointed out by the learned counsel for the petitioner Sri.S.A. Razzak that as per the order in R.C.R.No. 34/2011 that the tenant was directed to deposit the rent before the Rent Control Court every month and the said arrangement is being continued even now. The said tenant is the 2nd respondent in R.F.A.No. 196/2011. Therefore in tune with direction in R.C.R.No.34/11 the said tenant will continue to deposit the amount before the Rent Control Court and it will not be disbursed to either of the parties pending the proceedings. Steps shall be taken to dispose of the matter expeditiously. The parties will appear before the court below on 14.7.2015.

The parties will suffer their costs in the petition.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/