

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

OP(C).No. 2963 of 2015 (O)

IA NO. 5375/2014 IN OS NO. 598/2011 OF III ADDL. SUB COURT, ERNAKULAM

PETITIONER/PETITIONER IN IA / PLAINTIFF IN THE SUIT :

**C.J.MATHEW
AGED 66 YEARS, S/O. C.D. JOHN,
FLAT NO. 5B, TRINITY CROWN
EDAPALLY, COCHIN.**

**BY ADVS.SRI.P.SANJAY
SMT.A.PARVATHI MENON**

RESPONDENTS/RESPONDENTS IN IA /DEFENDANTS IN THE SUIT :

- 1. K.J.PAUL
S/O.VARKEY JOSEPH,
KUREKKAL HOUSE, MAVELI NAGAR
COCHIN UNIVERSITY P.O., KOCHI - 682 022.**
 - 2. JACOB JOSEPH PARAMBATHUSSERY
S/O.JOSEPH, 102A, XXIII, EDAPPALLY,
SOUTH EDAPPALLY P.O., ERNAKULAM
KOCHI – 682 024.**
 - 3. M/S. KANSAI INFRASTRUCTURE & DEVELOPERS PVT. LTD. 32/2982-B
SAHRUDAYA BUILDING, PONNURUNNI, VYTTLA P.O.,
ERNAKULAM, PIN - 6832019.**
 - 4. M/S. KERALA RUBBER AND RECLAIMS LTD.,
OFFICE AT CARMEL BUILDINGS, BANERJI ROAD, ERNAKULAM
COCHIN 18
REPRESENTED BY MANAGING DIRECTOR MRS.SABIENA ABRAHAM**
- R1 TO R3 BY ADVS. SRI.K.N..CHANDRABABU
SRI.T.G.KALADHARAN**
- R4 BY ADVS. SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-12-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1:- TRUE COPY OF IA NO. 5375/14 DTD 6/12/2014.
- EXT. P2:- TRUE COPY OF ORDER IN IA NO 5375/14 DTD 19/12/2014.
- EXT. P3:- TRUE COPY OF THE IA NO 15516/15 IN OP(C) NO. 25/2015.
- EXT. P4:- TRUE COPY OF THE JUDGMENT IN OP(C) NO. 25/2015 DTD 29/10/2015.
- EXT. P5:- COPY OF THE AMENDED PLAINT IN OS NO. 598/11 DATED 22-1-2014.
- EXT. P6:- COPY OF THE APPLICATION TO SUMMON THE COMPANY SECRETARY FILED AS IA NO. 5375/14 DATED 6-12-2014.
- EXT. P7:- COPY OF THE COUNTER AFFIDAVIT FILED BY THE 4TH RESPONDENT IN IA NO. 5375/14 DATED 12-12-2014.
- EXT. P8:- COPY OF THE WRITTEN STATEMENT FILED BY DEFENDANTS 1 TO 3 DATED 12-10-2011.
- EXT. P9:- COPY OF THE APPLICATION FOR AMENDMENT DATED 10-2-2013.
- EXT. P10:- COPY OF THE COUNTER AFFIDAVIT FILED BY PETITIONER TO THE AMENDMENT APPLICATION DATED 18-2-2013.
- EXT. P11:- COPY OF THE LIST OF DOCUMENTS SUBMITTED BY THE 4TH DEFENDANT DATED 21-5-2014.
- EXT. P12:- COPY OF THE APPLICATION FOR RETURN OF DOCUMENTS SUBMITTED BY THE 4TH DEFENDANT DATED 21-5-2014.
- EXT. P13:- COPY OF THE APPLICATION DATED 9-12-2015.
- EXT. P14:- COPY OF THE APPLICATION (WITHOUT ANNEXURE) DATED 9-12-2015.
- EXT. P15:- COPY OF THE DEPOSITION OF DW-1 DATED 10-11-2014.

RESPONDENT(S)' EXHIBITS :

- EXT. R1(A) COPY OF PLAINT IN OS NO. 598/2011 ON THE FILES OF THE IIIIRD ADDITIONAL SUB COURT AT ERNAKULAM.
- EXT. R1(B) COPY OF THE IA NO. 3300 OF 2014 IN OS NO. 598 OF 2011 FILED BY THE PLAINTIFF TO IMPEAD THE 4TH DEFENDANT BEFORE THE COURT BELOW.
- EXT. R1(C) COPY OF THE APPLICATION SEEKING AMENDMENT OF THE PLAINT – IA NO. 3308/2014 IN OS NO. 598 OF 2011.

(Contd...)

OP(C).No. 2963 of 2015 (O)

- EXT. R1(D) COPY OF THE COUNTER AFFIDAVIT ALONG WITH THE STATEMENT OF ACCOUNTS ISSUED FROM THE RESPECTIVE BANKS OF DEFENDANTS 1 AND 2 FILED BY THE DEFENDANTS 1 TO 3 IN IA NO. 4793 OF 2015 IN OS NO. 598/2011 BEFORE THE COURT BELOW.
- EXT. R1(E) COPY OF THE WITNESS LIST SUBMITTED BY THE PLAINTIFF IN OS NO. 598 OF 2011 BEFORE THE COURT BELOW.
- EXT. R1(F) COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN OP NO. 2885 OF 2015 DATED 27.11.2015.
- EXT. R4(a) COPY OF IA NO. 3308/2013 DATED 16.7.2013 FILED BY THE PETITIONER/PLAINTIFF BEFORE THE HONOURABLE SUB COURT, ERNAKULAM IN OS NO. 598/2011.
- EXT. R4(b) COPY OF AMENDED PLAINT IN OS NO. 598/2011 DATED 22-1-2014 FILED BY THE PETITIONER/PLAINTIFF BEFORE THE HONOURABLE SUB COURT, ERNAKULAM.
- EXT. R4(c) COPY OF IA NO. 1158/2014 DATED 28.2.2014 IN OS NO. 598/2011 FILED BY THE PETITIONER/PLAINTIFF BEFORE THE HONOURABLE SUB COURT, ERNAKULAM.
- EXT. R4(d) COPY OF IA NO. 1175/2014 DATED 1.3.2014 FILED BY THE DEFENDANTS 1 TO 3 IN OS NO. 598/2011 BEFORE THE HONOURABLE SUB COURT, ERNAKULAM.
- EXT. R4(e) COPY OF AFFIDAVIT DATED 21-5-2014 FILED BY THE 4TH RESPONDENT IN IA NO. 1175/2014 IN OS NO. 598/2011 BEFORE THE HONOURABLE SUB COURT, ERNAKULAM.
- EXT. R4(f) COPY OF LIST OF DOCUMENTS DATED 21.5.2014 FILED BY THE 4TH RESPONDENT IN OS NO. 598/2011 BEFORE THE HONOURABLE SUB COURT, ERNAKULAM.
- EXT. R4(g) COPY OF DEPOSITION OF PVV1 IN OS NO. 598/2011.

//TRUE COPY//

P.A. TO JUDGE

Mn

K. ABRAHAM MATHEW, J.

O.P.(C)No. 2963 of 2015

Dated this the 18th day of December, 2015

J U D G M E N T

Petitioner is the plaintiff in OS.598 of 2011. A document, minutes book, produced by the fourth respondent/fourth defendant was sought to be marked. A copy of the relevant statements in the minutes book has already been marked. The petitioner's case is that there is manipulation in the original document and the original should be marked since the photo copy of which has already been marked will not disclose the manipulation.

2. The ordinary rule is that only the original document shall be marked in the case. Secondary evidence can be adduced only in accordance with Section 65 of the Evidence Act. It is not known how a copy was marked when the original was available. The minutes book is for the period from 1963 to 2011 as submitted by the learned counsel for the fourth respondent. It is not in the current use of the company. If the manipulation is evident only from the original document, the Sub Judge should have marked the original document. Learned counsel for the

fourth respondent submits that after marking the original document, it may be returned to the fourth respondent as provided in Order 13 Rule 5 CPC. I think his request is reasonable.

In the result, this OP is disposed of with a direction to the learned Sub Judge to mark the original minutes book along with its copy. If an application is filed to return the original after judgment is pronounced, the court shall pass an order in accordance with the provisions in Order 13 Rule 5 CPC.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge