

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

OP(C).No. 2273 of 2014 (O)

JUDGMENT DATED 27-08-2014 IN CMA 9/2014 OF PRINCIPAL SUB COURT, KOCHI

ORDER DATED 5.4.2014 IN IA.NO.491/2014 IN OS 53/2013 OF MUNSIFF;S COURT,
KOCHI

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PETITIONER(S)/APPELLANT:

MADHU M.N., AGED 42 YEARS,
S/O.LATE M.V.NARAYANAN, MOONNAMKOOT HOUSE,
ELAMKUNNAPPUZHA VILLAGE, KOCHI TALUK, ERNAKULAM,
PIN - 682 503.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE

RESPONDENT(S):

KUNJAPPAN, AGED 82 YEARS,
S/O.KANNAN, RESIDING AT PARUTHIYEDATH HOUSE,
ELAMKUNNAPPUZHA VILLAGE, KOCHI TALUK, ERNAKULAM,
PIN - 682 503.

BY ADVS. SRI.DINESH R.SHENOY
SMT.K.K.JYOTHILAKSHMY
SRI.SANIL JOSE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

OP(C).No. 2273 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE PLAINT DATED 6.3.2013 IN O.S.NO.53 OF 2013 ON THE FILE OF THE MUNSIFF'S COURT, KOCHI.

EXT.P-2: TRUE COPY OF I.A.NO.595 OF 2013 DATED 6.3.2013.

EXT.P-3: TRUE COPY OF THE REPORT DATED 20.3.2013.

EXT.P-4: TRUE COPY OF THE WRITTEN STATEMENT DATED 6.4.2013 FILED BY THE PETITIONER

EXT.P-5: TRUE COPY OF THE ORDER DATED 1.6.2013 IN I.A.NO.595 OF 2013.

EXT.P-6: TRUE COPY OF I.A.NO.491 OF 2014 DTD 28.2.2014

EXT.P-7: TRUE COPY OF THE ORDER DATED 5.4.2014 IN I.A.NO.491 OF 2014.

EXT.P-8: TRUE COPY OF THE JUDGEMENT DATED 27.8.2014 IN C.M.A. NO.9 OF 2014 ON THE FILE OF THE SUB COURT, KOCHI.

EXT.P9: TRUE COPY OF THE STRUCTURAL PLAN OF THE RESIDENTIAL BUILDING.

RESPONDENT(S)' EXHIBITS:

EXT.R(a): TRUE PHOTOCOPY OF THE ORDER DTD.5.4.2014 IN IA.366/2014 IN OS.NO.53/2013, MUNSIFF COURT, KOCHI.

EXT.R(b): TRUE PHOTOCOPY OF THE ORDER DTD.27.1.20154 IN IA.NO.1437/2013 IN OS.NO.53/2013, MUNSIFF COURT, KOCHI.

EXT.R(c): TRUE PHOTOCOPY OF CMA.NO.9/2014, SUB COURT, KOCHI.

EXT.R(d): TRUE PHOTOCOPY OF LETTER DTD.13.6.2008 ISSUED TO THE RESPONDENT IN THE ORIGINAL PETITION UNDER THE RIGHT TO INFORMATION ACT.

EXT.R(e): PHOTOGRAPHS OF THE BUILDING IN THE PLAINT SCHEDULE PROPERTY.

//TRUE COPY//

P.A.TO JUDGE.

Msv/

B.KEMAL PASHA, J.

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O.P.(C).No.2273 of 2014

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Dated this the 6th day of August, 2015

J U D G M E N T

Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent.

2. Even though the matters sought for at present are outside the scope of this Original Petition, this Court is constrained to pass the following directions in the matter, solely on humanitarian considerations. Of course, the learned counsel for the respondent is also fair enough to concede to certain aspects. It has been pointed out by the learned counsel for the respondent that the most of the damage caused to the floors of the building were caused by the petitioner himself when there were attempts from his part to fix new windows on the northern wall as well as the southern wall of building. There was an order of temporary injunction restraining him from carrying out any modifications or alterations to the building. According to the

learned counsel for the respondent, the petitioner has violated the order and affixed new windows on the southern wall as well as the northern wall of the building, for which he had removed portions of both the walls and made new constructions by making use of concrete blocks.

3. According to the learned Senior Counsel for the petitioner, the petitioner cannot pull on at the premises as the floor of the kitchen as well as the floor of the bed room are totally worn out and withered. It has also been pointed out that there are cracks in the walls which have to be filled up by using mere plastering materials. There is a request for plastering the northern wall as well as the southern wall wherein the windows have been affixed. Over and above it, it has been pointed out that the toilet is totally dilapidated in nature and therefore, extensive repairs have to be carried out to the toilet. The learned Senior Counsel for the petitioner has also pointed out that some of the rafters on the roof have become withered away, thereby there occurred damage to the roof of the building.

4. The learned counsel for the respondent has pointed out that the plastering of the walls on the portions at which new constructions were made by the petitioner by violating the order of temporary injunction, cannot be permitted, as an application under Order XXXIX Rule 2A is pending against such actions of the petitioner. At the same time, the learned counsel for the respondent submits that the petitioner may be permitted to repair the floor of the kitchen. Over and above it, the learned counsel for the respondent is of the view that the petitioner can be permitted to repair the pipes as well as the sewage of the toilet.

5. On hearing either side, this Court is of the view that the petitioner can be permitted to plaster the floor of the kitchen which seems to be totally in a dilapidated condition. Further, the petitioner can be permitted to repair the portions from which the plastering has withered out at the floor of the bed room, and not as a whole. Apart from that, the petitioner can be permitted to install new pipe fittings as well as sewage to the toilet. Further, the petitioner can be permitted

to plaster the floor of the toilet also.

6. Even though there is a request from the part of the learned Senior Counsel for the petitioner to permit the petitioner to replace the roof of the toilet, the present roof does not show any damage at all. Therefore, the same cannot be permitted.

7. The petitioner is permitted to do the aforesaid works alone. Even if anything more is required, it is made clear that it is outside of the scope of the present Original Petition.

This Original Petition (Civil) is closed with the above permission granted to the petitioner and the court below is directed to dispose of the suit, as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

Sd/-

B.KEMAL PASHA
JUDGE