

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

RFA.No. 654 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN OS 876/2010 of II ADDL.SUB COURT,
ERNAKULAM DATED 15-12-2011**

APPELLANTS/DEFENDANTS:

- 1. ICICI PRUDENTIAL LIFE INSURANCE COMPANY LTD.,
CORPORATE OFFICE AT 1089, APPASAHEB MARATHA MARG, PRABHADEVI
MUMBAI-400 025, REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. ICICI PRUDENTIAL LIFE INSURANCE COMPANY LTD.
BRANCH OFFICE AT 2ND FLOOR, THOMAS TOWERS, M.G.ROAD
KOCHI-682 035, REPRESENTED BY ITS MANAGER.**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN**

RESPONDENTS/PLAINTIFFS:

- 1. P.K.THOMAS
SON OF G.KOCHUKUNJU, THOMAS VILLA, EXCEL PARK
STP ROAD, ELAMKULAM, KOCHI-683 020,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
VARGHESE SAMUEL, S/O. CHERIYAN SAMUEL,
RESIDING AT MULLAMANGALATH HOUSE, ULLANNOOR P.O.
KULANADA VILLAGE, PATHANAMTHITTA DISTRICT-689 503.**
- 2. THOMAS VARGHESE
SON OF P.K.THOMAS, RESIDING AT THOMAS VILLA
EXCEL PARK, STP ROAD, ELAMKULAM
KOCHI-683 020, REPRESENTED BY HIS POWER
OF ATTORNEY HOLDER VARGHESE SAMUEL,
S/O. CHERIYAN SAMUEL
RESIDING AT MULLAMANGALATH HOUSE, ULLANNOOR P.O.
KULANADA VILLAGE, PATHANAMTHITTA DISTRICT-689 503.**

**R1 & R2 BY ADVS. SRI.THAMPAN THOMAS
SRI.B.V.JOY SANKER
SRI.JACOB CHACKO
SRI.S.RENJITH**

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VPV

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

R.F.A.No.654 of 2012

Dated this the 8th day of April, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the defendants in O.S.No.876 of 2010 on the file of the Court of the II Additional Subordinate Judge of Ernakulam. The respondents are the plaintiffs therein. The suit instituted by the respondents for realisation of arrears of rent/damages for use and occupation was decreed after trial and the plaintiffs were held entitled to realise the sum of Rs.35,67,173/- with interest at 6% per annum from the date of suit till realisation. The plaintiffs were also held entitled to the costs of the suit. The defendants have aggrieved thereby filed this appeal.

2. When this appeal came up for admission hearing on 3.1.2013, a Division Bench of this Court passed an interim order staying the execution of the decree passed by the trial court subject to the condition that the entire amount due under the decree as on the date of the decree shall be deposited within a period of 45 days. This Court also directed that upon such deposit being made, it will be open to the decree holders to withdraw the amount thus

deposited on furnishing security to the satisfaction of the court below. Pursuant to the aforesaid order, the appellants deposited in the court below, the sum of Rs.45,67,261/-. From out of the said amount, the respondents withdrew the sum of Rs.41,50,920/- after furnishing bank guarantee for the said sum.

3. While matters stood thus, the dispute between the parties was settled by mediation. A memorandum of agreement dated 17.3.2015 under section 89 of the Code of Civil Procedure read with Rules 24 and 25 of the Civil Procedure (Alternative Dispute Resolution) Rules, 2008 signed by both parties and their counsel has been placed on record. The said memorandum of agreement discloses that the respondents have agreed to limit their claim in the suit to Rs.36,50,920/- and that they have paid back to the appellants by Demand Draft No.831246 dated 9.3.2015 drawn on Kadavanthra branch of South Indian Bank in favour of the second appellant the sum of Rs.5,00,000/- (being the excess amount withdrawn by them from out of the amount deposited by the appellants pursuant to this Court's interim order dated 3.1.2013). The agreement also discloses that the respondents/deGREE holders have relinquished their claim over the balance sum of Rs.4,16,341/- lying in deposit in the Sub Court, Ernakulam (Rs.45,67,261/-

Rs.41,50,920) and that the appellants are free to withdraw the said amount. The parties have also agreed that the bank guarantee furnished by the respondents at the time they withdrew the sum of Rs.41,50,920/- can be returned to the respondents.

In such circumstances, as the dispute between the parties has been settled out of court and the respondents have no subsisting claim as against the appellants, and the claim in O.S.No.876 of 2010 on the file of the Court of the II Additional Subordinate Judge of Ernakulam stands fully satisfied, we dispose of the appeal as settled out of court. It will be open to the appellants to withdraw the sum of Rs.4,16,341/- lying in deposit in the Sub Court, Ernakulam. The bank guarantee furnished by the respondents at the time they withdrew the sum of Rs.41,50,920/- shall be returned to the respondents. The court fee paid on the memorandum of appeal shall be refunded in full to the appellants.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANIL K.NARENDRA
JUDGE**