

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

OP(C).No. 2735 of 2014 (O)

OS 437/2014 OF MUNSIFF COURT, KOCHI

PETITIONER :

**P.B.SIVADAS, AGED 65 YEARS,
S/O.BHADRAN, PROPRIETOR, DURGA ICE FISH AGENCIES,
PANIKKASSERIL, BEACH WARD, ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.PRAVEEN K. JOY
SRI.T.A.JOY**

RESPONDENT :

**P.G.XAVIER, S/O.P.G.GEORGE,
PERUMPALLY HOUSE, KUMBALANGHY P.O.,
KUMBALAMGHY, KOCHI - 682 007.**

**R1 BY ADVS. SRI.N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE PHOTOSTAT COPY OF THE AGREEMENT DATED 21/10/2004 BETWEEN THE PETITIONER AND THE RESPONDENT.
- EXHIBIT P2: TRUE PHOTOSTAT COPY OF THE ORDER DATED 31/07/2006 IN C.R.P.NO. 1262/2004 (G) OF THIS HON'BLE COURT.
- EXHIBIT P3: TRUE PHOTOSTAT COPY OF THE ORDER DATED 06/11/2006 IN E.P.NO. 138/2003 IN O.S.NO. 98/2001 ON THE FILES OF ADDITIONAL SUB COURT, ALAPPUZHA.
- EXHIBIT P4: TRUE PHOTOSTAT COPY OF THE COMMON ORDER IN WP(C) NO. 33765/2006 IN W.P.(CIVIL) NO. 6234/2007 PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P5: TRUE PHOTOSTAT COPY OR ORDER DATED 01/05/2014.
- EXHIBIT P6: TRUE PHOTOSTAT COPY OF CERTIFIED COPY OF THE WARRANT.
- EXHIBIT P7: TRUE PHOTOSTAT COPY OF ORDER DATED 21/0/2014.
- EXHIBIT P8: TRUE PHOTOSTAT COPY OF PLAINT IN O.S.NO. 437/2014 ON THE FILES OF MUNSIFF'S COURT, KOCHI.
- EXHIBIT P9: TRUE COPY OF INJUNCTION PETITION FILED AS I.A.NO. 2010/2014.
- EXHIBIT P10: THE TRUE COPY OF THE PETITION IN E.A.NO. 374/14 IN E.P.138/03 IN OS 98/01 OF SUB COURT, ALLEPPY.

RESPONDENT(S)' EXHIBITS :

- EXT.R(1): COPY OF JUDGMENT IN RFA 75/03 DT 30/10/2013.

//TRUE COPY//

P.A. TO JUDGE

bp

B. KEMAL PASHA, J.

.....
O.P.(C) No.2735 of 2014
.....

Dated this the 4th day of June, 2015

J U D G M E N T

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In the execution, through E.P.138/2003, it is alleged by the petitioner/judgment-debtor that payments were made out of court through an agreement entered into between the parties. The payments could not be endorsed by the court below as the payments were not through court or with notice to the court. It seems that evidence was recorded by examining both the counsel and they have agreed that such payments were made. According to the learned counsel for the respondent/decreed-holder, the agreement is a concocted one and the signature of the

decree-holder was forged in the said agreement. The respondent is pointing fingers towards the lawyer, who was appearing for him before the Court below.

2. The petitioner is put to the task of filing a separate suit as OS.437/2014 in the matter. It seems that the defendant has entered appearance in the suit, filed written statement, and the suit is presently ripe for trial. If prior to the disposal of the suit, the execution proceedings are allowed to continue, it would result in irreparable loss and injuries to the petitioner. Therefore, it is just and expedient in the interest of justice to stay the execution proceedings in E.P.138/2003 of the Subordinate Judge's Court, Alappuzha till the disposal of OS.437/2014 pending before the Munsiff's Court, Kochi. The Munsiff's Court, Kochi can be directed to dispose of the suit, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. In the meantime, the execution proceedings in E.P.138/2003

OPC.2735/2014

: 3 :

before the Subordinate Judge's Court, Alappuzha shall stand stayed.

OP(Civil) is disposed of accordingly.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/04/06

// True Copy //

PA to Judge