

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

OP(C) .No. 2850 of 2014 (O)

EP 36/2014 IN OS 688/2007 of PRINCIPAL MUNSIFF'S COURT,
ERNAKULAM

PETITIONER :

T.A.ABDUL AZIZ, AGED 46 YEARS,
S/O. AHEMMAD UNNI, THARUPEEDUKAYIL, ELAMAKKARAA,
EDAPALLY SOUTH VILLAGE,
WORKING AT ELECTRICAL SECTION, MATTANCHERY WHARF,
COCHIN PORT TRUST, WILLINGDON ISLAND, KOCHI-682 003.

BY ADV. SRI.P.T.JOSE

RESPONDENT :

M.S.PUSHPAKUMARI,
PENSIONER, W/O. N.P.VASUDEVAN, PUSHPA VIHAR,
VAZHAKKALA VILLAGE, KAKKANAD DESOM, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.VISWANATHAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DSV/24/8/15

OP(C) .No. 2850 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS :

P1 : COPY OF EXECUTION PETITION 36/2014 IN OS 688/2007 BEFORE
THE PRINCIPAL MUNSIFF'S COURT, ERNAKULAM.

P2 : COPY OF THE ORDER DTD.7.11.2014 IN EP 36/2014 IN OS
NO.688/2007 BEFORE THE PRINCIPAL MUNSIFF'S COURT, ERNAKULAM.

RESPONDENT'S EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/24/8/15

B.KEMAL PASHA, J.

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O.P.(C). No.2850 of 2014

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Dated this the 13th day of August, 2015

J U D G M E N T

Execution proceedings of a money decree is under challenge. According to the judgment debtor, who is the petitioner herein, no notice on the E.P. was served on him; whereas the notice of the E.P. under Order XXI Rule 22 was affixed at his Tharavadu house. Therefore, he could not file an objection in respect of the E.P. The court below has presently ordered notice under Order XXI Rule 37 CPC.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The learned counsel for the respondent has fairly conceded that in case the petitioner has any valid ground to challenge the decree as one, which is not executable, still an opportunity can be given to the petitioner to challenge

the same through objection that can be filed as against the notice under Order XXI Rule 37 CPC.

In the result, this Original Petition (Civil) is allowed in part and the court below is directed to permit the petitioner to take all sorts of contentions, if any, to show that the decree is not executable in his objections, if any, to the notice under Order XXI Rule 37 CPC. The court below shall consider the question whether the decree is executable or not also, in the order that may ultimately be passed under Order XXI Rule 37 CPC.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/13/8/15