

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.BHAVADASAN**

**MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936**

**OP(C).No. 2886 of 2014 (O)**  
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**EA.NO.10/2014 IN EP.NO.50/2013 IN PLP NO.46/2011 OF MUNSIF COURT,  
KARUNAGAPPALLY**

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**PETITIONER(S):**  
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**SUDHEER,  
S/O SENULABDIN, MACHINEZHATHUTHARAYIL, MARU SOUTH,  
KARUNAGAPPALLY - 690 518.**

**BY ADVS.SRI.A.S.P. KURUP  
SRI.SADCHITH P. KURUP**

**RESPONDENT(S):**  
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**THAHAKUNJU,  
W/O KOYAKUTTY, PALLIVELIL VEEDU, KALLELIBHAGAM,  
KARUNAGAPPALLY - 690 518.**

**BY ADV. SRI.G.SREEKUMAR (CHELUR)**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05-01-2015,  
ALONG WITH OPC. 2887/2014, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**

**msv/**

OP (C).No. 2886 of 2014 (O)

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**APPENDIX**

**PETITIONER(S)' EXHIBITS**

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EXHIBIT P1: TRUE COPY OF THE AWARD DATED 22-07-2011 IN PLP NO 46/2011.

EXHIBIT P2: TRUE COPY OF THE E.P NO 59/2013 IN PLP NO 46/2011.

EXHIBIT P3: TRUE COPY OF THE OBJECTION DATED NIL FILED RESPONDENT IN  
EP NO 59/2013 IN PLP NO 46/2011.

EXHIBIT P4: TRUE COPY OF THE E.A NO 10/2014 IN EP NO 59/2013 IN P.P NO 46/2011  
FILED BY THE PETITIONER.

EXHIBIT P5: TRUE COPY OF THE OBJECTION DATED 18-07-2014 FILED BY THE  
RESPONDENT IN E.A NO 10/2014 IN EP NO 59/2014 IN P.P NO 46/2011.

EXHIBIT P6: TRUE COPY OF THE B DIARY PROCEEDINGS IN PLP NO 46/2011.

EXHIBIT P7: TRUE COPY OF THE REVIEW PETITION NO 15/2014 IN IA NO 10/2014 IN  
WP NO 59/2013 IN PLP NO 46/2011.

EXHIBIT P8: TRUE COPY OF THE ORDER DATED 18-11-2014 IN E.A NO 10/2014 IN  
EP NO 59/2013 IN P.P NO 46/2011.

EXHIBIT P9: TRUE COPY OF THE O.S NO 34/2014 FILED BY THE RESPONDENT  
BEFORE THE SUB COURT, KARUNAGAPPALLY.

**RESPONDENT(S)' EXHIBITS:**

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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

**P.BHAVADASAN, J.**

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**Original Petition (Civil) Nos.2886 &  
2887 OF 2014**  
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**Dated this the 5<sup>th</sup> day of January, 2015.**

**J U D G M E N T**

Shorn of unnecessary details, the question that arises for consideration in these petitions is whether an Award passed by the Lok Adalat dated 22.07.2011 ordering eviction of the petitioner who is alleged to be the tenant of the premises has become inexecutable in the light of subsequent events as claimed by the petitioner in these petitions.

2. The fact that the petitioner was occupying the premises owned by the respondent and he was bound to pay Rs.90,000/- per month as rent is a matter not in dispute. It is also not in dispute that advance amount was received by the respondent while occupying a portion of the premises. Whatever might have been the relationship between the parties, they chose to approach the Lok Adalat and both of them suffered an Award dated 22.07.2011. By the terms of the Award, the petitioner

herein was bound to vacate the building on or before 21.07.2013 and the respondent-landlord was bound to return a sum of Rs.20 lakhs consisting of Rs.12 lakhs received as advance and Rs.8 lakhs spent for furnishing the shop including electrical works. The petitioner was allowed to take his own commodities, racks and furnitures. As per the terms of the Award, as already noticed, the petitioner had to vacate the premises on 21.07.2013. Since he did not do so, the respondent-landlord instituted execution proceedings as per Ext.P2 produced along with the petitions. The tenant resisted the executability of the Award on the ground that subsequent to the passing of the Award, a new and fresh lease arrangement has been entered into between the parties making the Award inexecutable.

3. The specific contention taken was that even though the petitioner who is alleged to be the tenant of the premises was prepared to surrender the building as per the Award and had approached the landlord to surrender the premises, the landlord was not in a position to pay Rs.20 lakhs as stipulated in the Award passed by the Lok Adalat and the landlord requested the

tenant to continue the premises for another 11 months paying the same rate of rent. It was therefore contended that the Award has been superseded by the subsequent arrangement and the relationship between the parties i.e. landlord and tenant is governed by the Rent Control Act. The petitioner also gave details of various payments made by him subsequent to the so called fresh arrangement entered into between the parties. Accordingly, it is contended that the landlord cannot execute the Award of the Lok Adalat.

4. It appears that the petitioner moved the court below seeking permission to adduce evidence in support of his contention. That was allowed. Consequently, the petitioner filed his witness list. Then the landlord moved a petition for review of the order permitting the petitioner to adduce evidence. The petitioner also filed a petition seeking the court below to take evidence in the execution petition. Both the petitions were heard together. The order permitting the petitioner to adduce evidence was reviewed and it was held that the respondent can proceed with the execution. Accordingly, review petition was allowed.

Aggrieved judgment debtor before the court below has come up before this Court under Article 227 of the Constitution of India.

5. Learned counsel appearing for the petitioner contended that after having been impressed with the contention taken by the petitioner that there was a subsequent lease arrangement between the parties which supersedes the Award passed by the Lok Adalat and having found that in order to establish this fact evidence was necessary and having permitted the petitioner to adduce evidence in that regard, it comes with little grace from the court below to say that evidence is not necessary. At any rate, according to the learned counsel, he was entitled to his claim attempted to be established and depriving of him that opportunity affects his rights. In support of his contention, learned counsel pointed out that after the date on which he was bound to vacate the premises, amounts have been paid to the respondent herein who has received the same without demur and that shows the possibility of a new arrangement having been entered into between the parties. At any rate, the fact that amounts by way of rent or licence fee as the case may be were

received by the respondent was an indicator of the fact that there has been some sort of arrangement between the parties and that strictly speaking, Award of the Lok Adalat was not in force. The court below was therefore not justified in reviewing the order permitting the petitioner to adduce evidence in support of his case.

6. Learned counsel appearing for the respondent, on the other hand, contended that after having waited for two years on the basis of Award passed by the Lok Adalat, now the tenant is setting up a new arrangement. Learned counsel drew the attention of this Court to the fact that the respondent has filed a suit for arrears of licence fee due to him and even after the so called payments made by the petitioner assuming it to be after the date on which he was bound to vacate the premises, it is imprudent to believe, according to the learned counsel, that from the date of Award till the date fixed for vacating the premises, tenant would have been permitted to occupy the premises free of rent or gratuitously. Learned counsel also drew the attention of this Court to the fact that even though licence fee or rent

whatever that may be was fixed as Rs.90,000/- per month, initially payments were only at the rate of Rs.75,000/-. Learned counsel stressed the point that the petitioner has no case that when all the payments made by him are accounted for, there was excess payment than what is due as arrears of licence fee so as to even suggest existence of a new relationship between the parties. Further it is contended that there is no case for the petitioner that the Award passed by the Lok Adalat which is executable as if it is a decree is a nullity. If that be so, the executing court was bound to execute the Award as it stands and it could not have gone behind the decree.

7. True, the petitioner has set up a new arrangement subsequent to the Award. It is also true that payments have been effected by the petitioner and that has been received by the respondent. One should remember here that amounts were being deposited in the account of the respondent herein. Whatever that be, there was no objection from the side of the respondent in the amount being deposited in his account. But the fact remains that there is nothing to show that after the

licence fee due for the period covered by the Award, any excess amount is paid so as to even remotely suggest existence of a new relationship. It is difficult to believe the case put forward by the petitioner that soon after the date fixed for vacating the premises, he had approached the landlord expressing his readiness and willingness to vacate the premises and since the landlord was not in a position to pay Rs.20 lakhs, the petitioner was allowed to continue. One must remember that there is no such possibility even going by the subsequent events as evidenced by filing of the suit by the respondent herein which would indicate that huge amounts are due as arrears of licence fee. The mere fact that subsequent amounts have been deposited in the account of the landlord and no objection has been taken to the said conduct by itself is not a ground to come to the conclusion that there is a fresh arrangement superseding the Award passed by the Lok Adalat.

8. As rightly pointed out by the learned counsel for the respondent, the present attempt of the petitioner is to seek a declaration regarding the new arrangement making the Award

inexecutable. It is extremely doubtful whether the execution court can go into that at all. It must be noticed that there is no case for the petitioner that the Award passed by the Lok Adalat is a nullity and therefore is inexecutable. His definite case is that there is a subsequent arrangement between the parties and that makes the Award inexecutable. His contention that various payments were made by him is not much disputed by the landlord. However, there is nothing as of now to indicate that when the amounts so paid are taken into account, after the date on which he was bound to vacate the premises, he has paid anything in excess than what was due as licence fee. This is precisely what the lower court had found.

9. In the light of the above fact, it is difficult to accept the case of the petitioner that there was a fresh arrangement throwing overboard the Award of the Lok Adalat and the Award passed by the Lok Adalath has become inexecutable. It is also difficult to believe that the tenant would have been satisfied by the oral arrangement when there is an Award asking him to vacate the premises on 21.07.2013. Preponderance of

probabilities are against the petitioner.

10. At the risk of repetition, one may also notice that a suit has been instituted by the respondent seeking arrears of licence fee for the period occupied by the petitioner as a tenant or licensee as the case may be. This would fortify the contention taken by the respondent that there is no chance for a fresh arrangement between the parties and it is only a cooked up story for the purpose of resisting the order of eviction.

11. For the above reasons, this Court does not find any illegality, impropriety or irregularity in the order passed by the court below. However, considering the totality of the circumstances, this Court feels that some more time can be granted to the petitioner to vacate the premises even though strictly he may not deserve such a concession. Whatever that be, this Court feels that time can be granted till 30.04.2015 to the petitioner to vacate the premises. The petitioner is granted time till 30.04.2015 to vacate the premises on the following conditions:

- i) The petitioner files an affidavit before the executing

court stating that he will unconditionally vacate the premises on or before 30.04.2015 within a period of two weeks from today and pays licence fee due till the date of vacating the premises at the rate agreed to between the parties on or before 10<sup>th</sup> day of subsequent months.

ii) If the affidavit is not filed within a period of two weeks, execution court can proceed with the execution.

iii) Subsequent amounts due as arrears of rent or licence fee shall be deposited in court. After the deposit of arrears, the petitioner will be free to withdraw Rs.20 lakhs deposited by the respondent which is due to the petitioner herein.

These original petitions are disposed of as above.

**P.BHAVADASAN  
JUDGE**

smp