

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN**

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

OP (FC).No. 77 of 2015 (R)

**AGAINST THE ORDER DATED 20.11.2014 IN E.P. NO.8/2012 IN O.P. NO.1439/2004 ON
THE FILE OF FAMILY COURT, ERNAKULAM**

PETITIONER/1ST JUDGMENT DEBTOR:

**T.L.JOSEPH AGED 41 YEARS,
S/O. JOSEPH, VADAKKEVEETIL THACHIL HOUSE,
NORTH KUTHIYATHODU P.O., ERNAKULAM.**

BY ADV. SRI.SABU S.KALLARAMOOLA

RESPONDENT/DECREE HOLDER:

**JISHA ANTO, AGED 35 YEARS,
D/O. P.K.ANTO, PAZHAYATTIL HOUSE,
KUZHICKATTUSSERRY P.O., KUNDAI THRISSUR 680 697.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE E.P. NO.8/12 OF FAMILY COURT,
ERNAKULAM
- EXHIBIT P2 : TRUE COPY OF OBJECTION FILED IN E.P. NO.8/12 OF FAMILY
COURT, ERNAKULAM
- EXHIBIT P3 : TRUE COPY OF 'B' DIARY PROCEEDINGS IN E.P. NO.8/12 OF
FAMILY COURT, ERNAKULAM
- EXHIBIT P4 : TRUE COPY OF BALANCE STATEMENT FILED BY RESPONDENT
IN E.P. NO.8/12 OF FAMILY COURT, ERNAKULAM

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

V.K. MOHANAN & P.D.RAJAN, JJ

O.P.(F.C.) No. 77 of 2015

Dated this the 4th day of March, 2015

J U D G M E N T

Mohanana, J

The petitioner herein is the judgment debtor and the respondent in E.P. No.8/2012. The decree holder, the respondent herein, filed the above petition to execute the decree in O.P. No.1439/2004, whereby the Court below allowed her to realize 25 sovereigns of gold ornaments or the (present) value of the same and Rs.3 lakhs with interest @ 12% per annum from the date of petition ie., 22.12.2004 till realisation. It was also decreed to realise one almirah or its value of Rs.6,500/-. Thus, when the decree holder filed the Execution Petition the total amount claimed was Rs.11,76,010/-.

2. According to the petitioner, the amount quantified in the Execution Petition is not correct. According to him as per the decree, the decreed amount will come to

Rs.11,00,000/- and out of that he had already paid Rs.9,02,000/-. So according to the petitioner/judgment debtor, the total balance amount payable by him is only Rs.1,98,000/-. But, according to the petitioner the decree holder filed Ext.P4 balance statement by which it is shown that a further sum of Rs.8,20,010/- is due to be paid by the petitioner. As per the proceedings dated 20.11.2014 the Execution Court, though accepted the contention of the judgment debtor, directed him to pay the decree debt within three months. According to the petitioner the above order was issued on the basis of Ext.P4 balance statement filed by the decree holder, which according to the petitioner is not correct. Therefore, it is prayed to direct the Court below to consider Ext.P2 objection of the petitioner and to fix the quantum of decree debt by fixing the value of gold as on 30.09.2011, the date of judgment and also to fix the interest portion by setting off the amount already paid.

3. The learned counsel for the petitioner has also advanced contentions on the basis of the above facts and the averments in the Original Petition. We have carefully considered the same.

4. Having regard to the facts and circumstances of the case, we do not propose to pass any order either accepting or rejecting the contentions now put forward by the petitioner. The Execution Petition is now pending before the court below. Even though we have carefully considered and perused the proceedings dated 20.11.2014 of the court below, by which the court below directed the petitioner/judgment debtor to pay the balance amount within three months, we fail to understand as to how the amount was quantified by the court below as the balance amount to be paid by the petitioner. It is also not discernible from the above proceedings whether the objection raised by the petitioner was considered by the

court below before issuing the said order.

Under the above circumstance, this Original Petition is disposed of directing the Family Court, Ernakulam, to consider Ext.P2 objection filed by the petitioner, who is the judgment debtor and to pass a speaking order after considering the rival contentions and by fixing the actual amount due as per the decree in question and the balance amount payable by the petitioner. Till passing such an order, the court below is directed to defer all further proceedings in the above Execution Petition. The Order, as directed above, shall be passed within 45 days from today.

Sd/-
V.K. MOHANAN,
JUDGE.

Sd/-
P.D.RAJAN,
JUDGE.

jjj