

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

OP(C).No.3079 of 2014 (O)

E.A NO.91/2014 IN E.PNO.23/2014 OF THE SUB COURT,KARUNAGAPALLY.

PETITIONER:

**SINDHU,AGED 38 YEARS,W/O.ANIL KUMAR,
MOHANA SOUDAM,PATHARAM P.O.,KIDANGAYAM,
SOORANADU SOUTH VILLAGE,KUNNATHOOR TALUK,
KOLLAM DISTRICT.**

BY ADV.SMT.G.VIDYA

RESPONDENT'S:

- 1. HUSSAIN,AGED 47 YEARS,S/O.MYTHEEN KUNJU,
K.P.HOUSE,PALLISSERIKKAL P.O.,
SASTHAMCOTTA VILLAGE,MYNAGAPALLY TALUK,
KOLLAM,PIN - 690 521.**
- 2. ANIL KUMAR,AGED 43 YEARS,S/O.KARUNAKARAN PILLAI,
MOHANA SOUDAM,PATHARAM P.O.,KIDANGAYAM,
SOORNADU SOUTH VILLAGE,KUNNATHOOR TALUK,
KOLLAM - 690 522.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

OP(C).No.3079 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1-THE TRUE COPY OF THE PRELIMINARY DECREE PASSED IN O.S NO.80/2012 DATED 31/07/2013.

EXHIBIT-P2-THE TRUE COPY OF THE E.P NO.23/2014 IN O.S 80/2012 DATED 05/04/2014.

EXHIBIT-P3-THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN E.P NO.23/2014 IN O.S NO.80/12 DATED 27/06/2014.

EXHIBIT-P4-THE TRUE COPY OF THE E.A NO.91/2014, DATED 27/06/2014 IN E.P NO.23/2014 IN O.S NO.80/2012.

EXHIBIT-P5-THE TRUE COPY OF THE JUDGMENT IN O.P(C) 2558/2014 DATED 06/11/2014.

EXHIBIT-P6-THE TRUE COPY OF THE ORDER IN E.A NO.91/2014 IN E.P NO.23/2014 IN O.S NO.80/12 DATED 27/11/2014.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

B. KEMAL PASHA, J.

.....
O.P.(C) No.3079 of 2014
.....

Dated this the 18th day of June, 2015

J U D G M E N T

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Dismissal of E.A. No.91/2014 in E.P. No.23/2014 in O.S. No.80/2012 of the Subordinate Judge's Court, Karunagapally is under challenge. On 31.07.2013, the decree was passed, thereby directing the petitioner to pay an amount of ₹3 lakhs and costs to the decree-holder. It was ordered that in case the decree-holder refuses to receive the amount, the said amount has to be deposited within ten days from the expiry of the said period of one month. If such payment or deposit is not made, the decree-holder would be entitled to realise the amount with interest at the rate of 12% per annum from the date of suit together with costs. The petitioner had deposited ₹3,56,244/- which is inclusive of costs and interest, on 30.10.2013. According to the petitioner, even though the decree was passed on

31.07.2013, the copy of the decree was made available only on 03.10.2013. The directions contained in the decree were not incorporated in the A diary and, therefore, the petitioner could not note down the conditions imposed by the court below regarding the time of payment. In such case, according to the petitioner, the 30 days' time should have been reckoned from the date on which the copy of the decree was made available to the petitioner and, therefore, there was no delay in complying with the decree.

2. The respondent has filed E.P. by contending that the condition has been violated. E.A.No.91/2014 was filed by the petitioner challenging the maintainability of the execution petition on the aforesaid grounds. It seems that the court below has taken the view that there is two days' delay in complying with the directions in the decree and, therefore, the EP is maintainable.

3. Notice was served on the 1st respondent, who is the decree-holder. There is no representation for the 1st

respondent. Notice to the 2nd respondent is dispensed with as the 2nd respondent is the husband of the petitioner. Heard the learned counsel for the petitioner.

4. It seems that Ext.P1 certified copy of the decree was ready on 28.09.2013 only. The date notified for appearance to receive the copy was 03.10.2013. The date when the copy was delivered is also shown as 03.10.2013. The same is evident from the endorsements on Ext.P1 decree. It seems that the court below has mistakenly noted the date on which the copy of the decree was served as 03.09.2013 instead of 03.10.2013. In fact, the copy was served on 03.10.2013 only. In such case, when the amount was deposited on 30.10.2013, the same was well within time, especially when the court below has stated that the A diary on verification showed that the details of the decree regarding the time within which the payment was to be made were not incorporated in the A diary. Matters being so, Ext.P6 order is liable to be set aside and E.A.91/2014 is

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only to be allowed.

In the result, OP(Civil) is allowed. Ext.P6 order is set aside and E.A.No.91/2014 in E.P.No.23/2014 in O.S.No.80/2012 is allowed. E.P. stands dismissed as not maintainable.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/18/06

// True Copy //

PA to Judge