

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

OP(C).No. 3097 of 2014 (O)

(OS 104/2014 of I ADDL.SUB COURT, THRISSUR)

PETITIONERS:

1. ABDUL KHADER, AGED 55 YEARS
S/O.KUNJU MOHAMMED, PATHIYASSERY, 50/6, S.N.PURAM
PANANGAD - 680 665, KODUNGALLUR, THRISSUR DISTRICT.
2. RAJULA SHAMSUDDIN, AGED 42 YEARS,
W/O. SHAMSUDDIN, SREE NARAYANAPURAM VILLAGE
PANANGAD DESOM, KODUNGALLUR TALUK - 680 668.
THRISSUR DISTRICT.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS:

1. GOPI, AGED 57 YEARS
S/O.KUNNATHULLIL SANKARANKUTTY,
MANALUR VILLAGE & DESOM, THRISSUR TALUK.
2. M/S.EUREKA TRADE LINKS
REP.BY ITS MANAGING PARTNER, K.MANOJ
KUMARANGALATH VEEDU, PANANGAD (PO)
KODUNGALLUR TALUK - 680 665.
3. K.MANOJ, AGED 39 YEARS,
S/O.LATE GANGADHARA MENON, MANAGING PARTNER
M/S.EUREKA TRADE LINKS, S.N.PURAM, KUMARANGALATH VEEDU
PANANGAD (PO), KODUNGALLUR TALUK - 680 665.
4. P.SUDHEESH, AGED 40 YEARS,
S/O.ARAVINDAKSHAN, PANANGAD HOUSE, PANANGAD POST
S.N. PURAM , KODUNGALLUR
THRISSUR DISTRICT - 680 665.

R2 - R4 BY ADV. SRI.K.C.ELDHIO
R2 -R4 BY ADV. SRI.JIJO THOMAS
R2 -R 4 BY ADV. SRI.MALLENATHAN.M.
R2 -R4 BY ADV. SRI.ANEESH JAMES
R2 -R4 BY ADV. SRI.ANIL R.NATH
R1 BY ADV. SRI.VINOD RAVINDRANATH
R1 BY ADV. SRI.SAJU.S.A

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1 COPY OF THE ASSIGNMENT DEED EXECUTED BY THE FOURTH RESPONDENT IN FAVOUR OF THE PETITIONERS.
- EXHIBIT P2 COPY OF THE PLAINT IN OS NO.104/2014 BEFORE THE FIRST ADDITIONAL SUBORDINATE COURT, THRISSUR.
- EXHIBIT P3 COPY OF THE WARRANT OF ATTACHMENT ISSUED BY THE FIRST ADDITIONAL SUBORDINATE COURT, THRISSUR IN OS NO. 104/2014 IN IA NO. 2364/2014.
- EXHIBIT P4 COPY OF THE WRITTEN STATEMENT FILED BY THE FOURTH DEFENDANT IN OS NO. 104/2014 BEFORE THE FIRST ADDITIONAL SUBORDINATE COURT, THRISSUR.
- EXHIBIT P5 COPY OF THE AFFIDAVIT AND PETITION FILED BY THE FIRST RESPONDENT PLAINTIFF IN IA NO.2364/2014 IN OS NO.104/2014 BEFORE THE FIRST ADDITIONAL SUBORDINATE COURT, THRISSUR.
- EXHIBIT P6 COPY OF THE OBJECTION FILED BY THE FOURTH RESPONDENT IN IA NO.2364/2014 IN OS NO. 104/2014 BEFORE THE FIRST ADDITIONAL SUBORDINATE COURT, THRISSUR.
- EXHIBIT P7 COPY OF THE AFFIDAVIT AND PETITION IN IA NO. 4473/2014 IN OS NO. 104/2014 FILED BEFORE THE FIRST ADDITIONAL SUBORDINATE COURT, THRISSUR.
- EXHIBIT P8 COPY OF THE COMMON ORDER IN IA NO. 2364/2014 AND IA NO. 4473/2014 IN OS NO.104/2014 DATED 30/10/2014 PASSED BY THE FIRST ADDITIONAL SUBORDINATE COURT, THRISSUR.

RESPONDENTS' EXHIBITS: NIL.

// True copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.3097 OF 2014

Dated this the 7th day of April, 2015.

J U D G M E N T

This original petition is directed against the order dated 30.10.2014 in I.A.No.2364/2014 and I.A.No.4473/2014 in O.S.No.104/2014 passed by the 1st Additional Sub Court, Thrissur.

2. I.A.No.2364/2014 is filed by the plaintiff in the suit for attachment of the property. That petition was resisted by the defendants in the suit pointing out that the plaintiff is a money lender, lending money at an exorbitant rate of interest. Various other averments are also made in the counter affidavit which are not relevant for the purpose.

3. I.A.No.4473/2014 was filed to modify the order of attachment and restrict the attachment to a portion of the property. The averment in the said petition before the court below is that petitioner therein is the 3rd defendant in the suit. The suit was one for recovery of money and it is pointed out that

attachment of total extent of 119 cents of land in survey No.59/5 of Sreenarayanapuram village is unnecessary because the value of the property would be much higher than what is due as per the claim. According to the petitioner, value of the property will be more than Rs.1 crore where the plaint claim is only Rs.23 and odd lakhs. The petitioner pointed out that since there was failure in business, the defendants could not repay the amount and proceedings under the SARFAESI Act has been initiated and the petitioner's properties have been taken possession of by the Bank. The petitioner therefore prayed that the attachment may be limited to a portion of the property now available with the defendants.

4. The court below, for the purpose of the Interlocutory Applications, marked Exts.A1 to A4 on the side of the petitioner and Ext.B1 on the side of the respondent. The court below holding that since there was an undertaking by the defendants not to alienate such extent of property no relief need be granted, allowed I.A.No.2364/2014 and dismissed I.A.No.4473/2014.

5. The petitioners before this Court are not parties to the

proceedings. They happened to purchase 20 cents of property even before the date of attachment in the suit. The petitioners point out that their property of 20 cents is to be released from attachment and the attachment may be confined to balance extent of property.

6. Learned counsel appearing for respondents 2 to 4 who are owners of the property pointed out that what is now available is only 60.833 cents with a building thereon which, according to them, will be sufficient to meet the decree debt.

7. After having heard the learned counsel for the petitioners and the learned counsel appearing for respondents 2 to 4, it is felt that the request made by the petitioners seems to be reasonable.

Therefore, the impugned order is set aside and the attachment shall be confined to 60.833 cents and building thereon and the attachment with regard to balance extent of property shall stand lifted.

Sd/-

P.BHAVADASAN
JUDGE

smp