

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

RP.No.456 of 2015 (U) IN WP(C).32166/2014

JUDGMENT IN WP(C) 32166/2014

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REVIEW PETITIONER/ADDL. 3RD RESPONDENT:

DR.FEROZ ABUBACKER AGED 39 YEARS,
S/OMR. ABUBACKER AK., 1262, PRESIDENTIAL DRIVE,
WILMINGTON, DELAWARE 19807 REPRESENTED BY HIS
POWER OF ATTORNEY SHRI PA ABDUL RAZAK, AGED 60,
S/O SHRI ABDUL KADER, RESIDING AT PARAKKAT HOUSE,
KALOOR-KDAVANTHARA ROAD, ELAMAKULAM, KOCHI-682 017.

BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.ANILA PETER
SRI.J.VIVEK GEORGE

RESPONDENTS/PETITIONER & RESPONDENTS:

1. DR.THOMAS PHILIP, AGED 63 YEARS,
SON OF PHILIP, 10A, DOVER COURT APARTMENTS,
SREKANDATH ROAD, RAVIPURAM, ERNAKULAM 682 016,
2. THE CORPORATION OF COCHIN REP BY ITS SECRETARY,
PARK AVENUE ROAD, ERNAKULAM, COCHIN 682 011.
3. MATHER PROJECTS PRIVATE LIMITED, REP BY ITS CHIEF
EXECUTIVE OFFICER, KODIYATH CHAMBERS, RAJAJI ROAD,
ERNAKULAM, COCHIN-35.

R2 BY ADV. SRI.K.ANAND,
R1 BY ADVS. SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
R3 BY SRI.GEORGE ABRAHAM PACHAYIL

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
14-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX IN RP.No.456 of 2015 (U) IN WP(C).32166/2014

PETITIONER'S EXHIBITS:

ANNEXURE A1: TRUE COPY OF THE CONTRACT FOR SALE BETWEEN THE REVIEW PETITIONER AND THE 3RD RESPONDENT DATED 5.9.2005

ANNEXURE A2: TRUE COPY OF THE E-MAIL REGARDING THE WORKS EXECUTED BY THE 3RD RESPONDENT IN THE REVIEW PETITIONER'S TERRACE DATED 17.5.2010

ANNEXURE A3: TRUE COPY OF THE E-MAIL REGARDING THE WORKS IN THE REVIEW PETITIONER'S FLAT DATED 11.1.2011

ANNEXURE A4: TRUE COPY OF THE E-MAIL REGARDING RECTIFICATION WORKS IN THE REVIEW PETITIONER'S TERRACE DATED 27.11.2012

ANNEXURE A5: TRUE COPY OF THE REVIEW PETITIONER'S E-MAIL DATED 8.5.2013 IN RESPONSE TO THE 3RD RESPONDENT'S E-MAIL DATED 3.5.2013

ANNEXURE A6 TRUE COPY OF THE PHOTOGRAPHS

ANNEXURE A7 TRUE COPY OF THE INVOICE RAISED BY THE THIRD RESPONDENT

ANNEXURE A8 TRUE COPY OF THE E-MAILS EXCHANGED WITH SRI.N.ASOKAN

ANNEXURE A9 TRUE COPY OF THE AGREEMENT FOR SALE OF UNDIVIDED INTEREST IN THE LAND DATED 5.9.2015

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

R.P.No.456 of 2015 in
W.P.(C)No.32166 of 2014 U

Dated this the 14th day of September, 2015

ORDER

The review petitioner, being the additional third respondent in W.P.(C)No.32166/2014, filed the present petition seeking review of the judgment dated 17.03.2015 on the ground that it was rendered without notice to him.

2. The learned counsel for the review petitioner has strenuously contended that the first respondent knows very well that the review petitioner resides in the USA and that there is no possibility of having any notice served on him in the address shown in the cause title of the writ petition. She has also advanced elaborate arguments on the merits of the matter.

3. A perusal of the record reveals that the notice issued to the review petitioner was returned with an

endorsement “unclaimed”. It is not seriously disputed either by the writ petitioner or by any of the respondents that the review petitioner lives in the USA. In the facts and circumstances, it is imperative in the interest of justice to recall the judgment dated 17.03.2015 rendered in W.P.(C) No.32166/2014 and hear the matter on merits with the participation of the review petitioner.

Accordingly, the review petition is allowed and the writ petition is restored to file.

Dama Seshadri Naidu, Judge

tkv