

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 4366 of 2010 (U)

PETITIONER:

**K.BABU, PROPRIETOR,
M/S.MANNA CASHEW CO.,
MELLAKKADU, KOTTUKAL P.O,
ANJAL, KOLLAM-691 519.**

**BY ADVS.SRI.A.V.XAVIER
SRI.K.JOLLY JOHN**

RESPONDENT(S):

- 1. REGIONAL PROVIDEND FUND COMMISSIONER-II,
EMPLOYEE'S PROVIDENT FUND ORGANISATION,
SUB. REGIONAL OFFICE, CHINNAKADA, KOLLAM-691 001.**
- 2. SRI.S.MAHALINGAM, RECOVERY OFFICER,
EMPLOYEE'S PROVIDENT FUND ORGANISATION,
SUB. REGIONAL OFFICE, CHINNAKADA, KOLLAM-691 001.**
- 3. SRI.G.PURUSHOTHAMAN, ENFORCEMENT OFFICER,
EMPLOYEE'S PROVIDENT FUND ORGANISATION,
SUB. REGIONAL OFFICE, CHINNAKADA, KOLLAM-691 001.**
- 4. K.MANOJ, PROPRIETOR,
MOUNT MORIA CASHEWS, KALLUVILA VEEDU,
CHERUVAKKAL.P.O., AYOOR, KOTTARAKKARA.**

**R1TO R3 BY ADV. SRI.V.V.SURESH,SC
R4 BY ADVS. SRI.V.V.RAJA
SRI.R.RANJITH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1 : LEASE AGREEMENT DATED 1.1.2010 BETWEEN OWNER OF BINU CASHEW AND PETITIONER.
- EXT. P2 : TRUE COPIES OF THE INVOICES DATED 4.1.2010 AND 5.1.2010 OF SOUTH KERALA CASHEW EXPORTERS TO PETITIONER.
- EXT. P3 : TRUE COPIES OF THE DELIVERY NOTES DATED 4.1.2010 AND 5.1.2010 OF SOUTH KERALA CASHEW EXPORTERS TO PETITIONER.
- EXT. P4 : TRUE COPY OF THE WARRANT OF ATTACHMENT OF MOVABLE PROPERTY DATED 27.1.2010 ISSUED BY THE 2ND RESPONDENT.
- EXT. P5 : TRUE COPY OF THE MAHASSAR DATED 1.2.2010 PREPARED BY THE 3RD RESPONDENT.
- EXT. P6 : NOTICE DATED 1.2.2010 PUBLISHED BY THE 3RD RESPONDENT FOR 2ND RESPONDENT.
- EXT. P7 : REPRESENTATION OF THE PETITIONER DATED 2.2.2010 TO THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.M. SHAFFIQUE, J.

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W.P (C) No.4366 of 2010

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Dated this, the 26th day of May, 2015

J U D G M E N T

Petitioner challenges Exts.P4, P5 and P6 by which the Provident Fund Department sought to attach the movables in the leased premises of the petitioner. It is *inter alia* stated in Ext.P4 that an amount of Rs.47,59,257/- is payable by M/s. Mount Moria Cashew, the 4th respondent herein, to the Provident Fund Department. However, in Ext.P4, after the name of the 4th respondent, it was stated (Manna Cashew). According to the petitioner, they have taken on lease the very same premises which was originally occupied by M/s.Mount Moria Cashew and they were carrying on their business. Ext.P1 is the lease agreement executed between the petitioner and the landlord. Further, Exts.P2 and P3 are documents to indicate that the petitioner has purchased their materials which was stocked in the said premises.

2. Petitioner submitted Ext.P7 representation to the Recovery Officer indicating the aforesaid factual situation. But, still, the attachment is not vacated and therefore the petitioner had approached this Court. By interim order dated 18/2/2010, this Court directed respondents 2 and 3 to lift the order of attachment made by way of Exts.P4, P5 and P6. The said interim order continues even now.

3. Learned counsel for the petitioner submits that the petitioner had vacated the said premises as well. A statement has been filed by the respondents *inter alia* stating that they have power under Section 17 B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 to make the transferee jointly and severally liable to pay compensation if an employer transfers the establishment in whole or part. In fact, there is no material to indicate that there was any transfer of the establishment by the 4th respondent in favour of the petitioner. The authorities cannot act on mere apprehensions or surmises. There has to be some material to indicate that there was a transfer of establishment by the 4th respondent in favour of the petitioner, which is lacking in

the present case and no material is available as per the statement of the respondents.

Under the above circumstances, I am of the view that this writ petition is only to be allowed. Accordingly, Exts.P4, P5 and P6 to the extent it seeks attachment of the property of the petitioner is hereby quashed.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge