

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 15160 of 2006 (D)

PETITIONER(S) :

C.VINAYA KUMAR, S/O.VELU, CHERIAMMADATHU
HOUSE, MANGATERI P.O. TIRUR, MALAPPURAM DIST.NOW
EMPLOYEES & R/A. P.B.NO.3959, SHARJAH, UAE
REP. BY, HIS BROTHER & P.A.HOLDER SHABU, S/O.VELU
CHERIAMMADATHU HOUSE, THALAKKAD VILLAGE, TIRUR,
MALAPPURAM 676 105.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENT(S) :

1. VALSA, W/O.THANKAPPAN, PUTHENPURACKAL
HOUSE, SENKULAM KARA, KUNHITHANNY VILLAGE.

2. THANKAPPAN, S/O.BHASKARAN, PUTHENPURACKAL
HOUSE, SENKULAM KARA, KUNJITHANNY VILLAGE.

3. RAJU, S/O.MADHAVAN, MECHERIYIL HOUSE,
SENKULAM KARA, KUNHITHANNY VILLAGE.

4. LUKAN V.A. S/O.ANTHRY, VARAPPETTIY
KUDIYIL HOUSE, SENKULAM KARA, KUNJITHANNY VILLAGE.

5. THE ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE, KOTHAMANGALAM.

6. V.K.BALAN, S/O.KARUNAKARAN,
VATTAKKALLIL HOUSE, PUNNATHALA DESOM, KOOMATHOOR
AMSOM, TIRUR TALUK.

7. THE DEPUTY TAHSILDAR (RR),
TALUK OFFICE, TIRUR.

R,R5 BY ADV. SRI.MATHEWS JACOB (SR.)

R,R5 BY ADV. SRI.P.JACOB MATHEW

R,R7 BY GOVERNMENT PLEADER SRI. R. PADMARAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-
09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT. P1 : TRUE COPY OF THE COMMON AWARD DATED 31.10.2003 IN
OP (Mvs.) 1649, 1679, 1677 AND 1678 OF 1997 OF THE
MACT MUVATTUPUZHA.
- EXT. P2 : TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED
03.08.2005 ISSUED BY THE DEPUTY TAHSILDAR (RR), TALUK
OFFICE, TIRUR.
- EXT. P3 : TRUE COPY OF THE ORDER DATED 06.03.2006 IN I.A. NO.
3453/2005 IN MACA NO. 1718/2005

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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Dated, this the 15th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

This writ petition has been preferred by the owner of the vehicle bearing No. KLL 1076, which got involved in a road traffic accident occurred on 26.12.1995, leading to separate claim petitions as O.P. (M.V.) Nos. 1649, 1676, 1677 and 1678 of 1997, which were disposed of by the common Award passed by the Tribunal on 31.10.2003. As per the common award, the Insurance Company was granted liberty to realize the amount, after satisfaction of the claim amount, by virtue of violation of statutory conditions and policy conditions. The common Award passed by the Tribunal gave rise to different appeals viz. MACA No. 1718, 1816, 1834 and 2104 of 2005.

2. The learned counsel for the petitioner submits that the petitioner was constrained to file present writ petition, because of the coercive proceedings sought to be pursued invoking the provisions under the Revenue Recovery Act and further since the stay petition

with regard to the recovery proceedings could not be moved in the concerned appeals, because of the delay involved therein.

3. The point to be considered is, whether the writ petition is maintainable, invoking the power of this Court either under the Article 226 or 227 of the Constitution of India, notwithstanding the statutory remedy available under Section 173 of the M.V. Act, which has already been pursued by the writ petitioner by filing appeals, as mentioned above.

4. The reasons pointed out as to the initiation of revenue recovery proceedings and inability of the writ petitioner to obtain interim stay because of the delay occurred in the appeals do not appear to be palatable to this Court, particularly in view of the mandate of Rule 3-A(3) Order XLI of the Code of Civil Procedure, which specifically bars granting of any interim stay, before condoning the delay involved. The said provision is mutatis mutandis applicable to the proceedings in respect of the proceedings under the Motor Vehicles Act as well. More over, it has been held by the Apex Court in crystal clear terms, as per the decision rendered in **Sadhana Lodh Vs. National Insurance Co. Ltd. [2003 (2) KLT 47 = (2003) 3 SCC 524]**, that no petition

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: 3 :

under Article 226/227 will lie against an Award passed by the Tribunal under the relevant provisions of the Motor Vehicles Act and that the remedy is only by way of appeal under Section 173 of the Act.

In the said circumstances, this Court finds that the writ petition is not maintainable. The same is dismissed accordingly.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**K. HARILAL,
JUDGE**

kmd