

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).NO. 11927 OF 2015 (M)

PETITIONER(S):

BENNY ABRAHAM, S/O. LATE V.C. ABRAHAM,
AGED 54 YEARS, OKAMATTATHIL HOUSE, KOOTHATTUKULAM P.O.,
ERNAKULAM DISTRICT-686662, PROPRIETOR,
M/S. HOLLY HOCK RESORTS, POTHAMEDU, MUNNAR

BY ADVS. SRI. JAMES ABRAHAM (VILAYAKATTU)
SRI. P. BALAN (VYTTILA)

RESPONDENT(S):

1. STATE OF KERALA REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF TOURISM, PARK VIEW, THIRUVANANTHAPURAM-695033
2. THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES,
KOTTAYAM-686001
3. THE INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, KATTAPPANA, IDUKKI-686001
4. THE INTELLIGENCE OFFICER,
SQUAD NO. 2. IDUKKI AT THODUPUZHA-686001

BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 11927 OF 2015 (M)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: A TRUE COPY OF THE ORDER NO.M4-3560/09 DATED 18.02.2012
ISSUED BY THE DIRECTOR OF TOURISM DEPARTMENT.

EXT.P2: A TRUE COPY OF THE LETTER NO.M4-3003/2012 DATED 30.12.2014
ISSUED BY THE DEPUTY DIRECTOR(MARKETING) OF TOURISM DEPARTMENT.

EXT.P3: A TRUE COPY OF THE WEB PAGE IS DOWN LOADED FROM THE OFFICIAL
WEB SITE OF THE 1ST RESPONDENT.

EXT.P4: A TRUE COPY OF THE ORDER NO.CR.21/12-13 DATED 24.12.2015
ISSUED BY THE 4TH RESPONDENT.

EXT.P5: A TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 17.03.2015
ISSUED BY THE 3RD RESPONDENT

EXT.P6:A TRUE COPY OF THE ORDER DATED 27.03.2015 IN LTA NO.112/2014

EXT.P7: A TRUE COPY OF THE NOTICE NO.ISI IV/CR 12/14-15 DATED
16.09.2014 ISSUED BY THE 4TH RESPONDENT.

EXT.P8: A TRUE COPY OF THE JUDGMENT DATED 9.3.2015 IN W.P.(C) .
NO.5240/2015

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.11927 of 2015

.....
Dated this the 9th day of April, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P6 order of the 2nd respondent, whereby the stay application filed by the petitioner along with an appeal against Ext.P4 assessment order was dismissed by the 2nd respondent. The learned counsel for the respondent would submit that inasmuch as that the 2nd respondent has dismissed the stay petition, and not granted any conditional order of stay, there was no requirement of keeping the appeal itself pending, so as to require the petitioner to pay the entire disputed tax amount as a condition for the hearing of the appeal. He also contends that in passing Ext.P6 order the 2nd respondent did not exercise his discretion validly.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that, if the 2nd respondent was of the opinion that there was no merit in the stay petition, then it was open to him to dispose the appeal itself. I note, however, that in the instant case, the 2nd respondent

has chosen to dismiss the stay application. Although in Ext.P6 order, the 2nd respondent has given reasons for his decision, taking note of the grounds urged by the petitioner in the appeal, I find that the interests of justice would require me to direct the petitioner to deposit an amount of 30% of the amount confirmed against him by Ext.P4 assessment order, as a condition for stay of recovery of the balance amounts confirmed against him by the said order, pending disposal of the appeal before the 2nd respondent. Accordingly, I dispose the writ petition with the following direction:

- i. The petitioner shall deposit 30% of the amount confirmed against him by Ext.P4 order before the 3rd respondent on or before 30.04.2015.
- ii. On the petitioner remitting the said amount as aforesaid, the 2nd respondent shall proceed to hear and dispose the appeal preferred by the petitioner against Ext.P4 order, within a period of two months from the date of receipt of a copy of the judgment, after hearing the petitioner.
- iii. I make it clear that, on the petitioner paying an amount of 30% of the amounts confirmed against him by Ext.P4 order, no further steps for recovery of the balance amounts confirmed

against him by the said respondent shall be pursued against the petitioner, till such time as orders are passed by the 2nd respondent as directed and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns