

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

WP(C).No. 17691 of 2010 (J)

PETITIONER(S) :

**T.P.ANTONY, AGED 48 YEARS,
S/O.POULOSE, THOTTATHIL HOUSE, NADAKKAVU P.O.,
MANAKUNNAM VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM DISTRICT.**

**BY SRI.M.C.SEN (SENIOR ADVOCATE)
ADV. SRI.K.J.KURIACHAN**

RESPONDENT(S) :

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM**
- 2. THE SUPERINTENDING ENGINEER,
PUBLIC WORKS DEPARTMENT, ROADS AND BRIDGES,
SOUTH CIRCLE, THIRUVANANTHAPURAM.**
- 3. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENTS, ROADS DIVISION, KOTTAYAM.**

BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF JUDGMENT DATED 18.10.2007 IN
W.P.(C).NO.10737/2007.**

EXHIBIT P2: TRUE COPY OF CLOSURE AGREEMENT DATED 10.03.2008.

**EXHIBIT P3: TRUE COPY OF LETTER DATED 12.04.2010 ISSUED TO
THE 2ND RESPONDENT.**

**EXHIBIT P4: TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD
EVIDENCING RECEIPT OF EXT.P3 BY 2ND RESPONDENT.**

**EXHIBIT P5: TRUE COPY OF LETTER DATED 28.04.2010 ISSUED TO
THE 1ST RESPONDENT.**

**EXHIBIT P6: TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD
EVIDENCING RECEIPT OF EXT.P5 BY 1ST RESPONDENT.**

**EXHIBIT P7: TRUE COPY OF THE JUDGMENT DATED 17.12.1999 IN
O.P.NO28872/1999.**

**EXHIBIT P8: TRUE COPY OF JUDGMENT DATED 18.12.1999 IN
O.P.NO28871/1999.**

**EXHIBIT P9: TRUE COPY OF JUDGMENT DATED 25.06.2009 IN
W.P.(C).NO.35943/2008.**

**EXHIBIT P10: TRUE COPY OF STATEMENT DATED 29.03.2010 ISSUED BY SOUTH
INDIAN BANK LTD., MARKET ROAD SHOWING THE RATE OF
INTEREST CHARGED ON OVER DRAFT ACCOUNT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.
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W.P.(C) No.17691 of 2010 - J
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Dated this the 6th day of July, 2015

J U D G M E N T

The petitioner in the above writ petition seeks payment of a final bill of an amount of 7,00,000/-, which is presented as early as on 24.05.2004 with interest a@12% p.a.

2. The Government had filed a counter affidavit in which it has been specifically stated that before the submission of the final bill, a retaining wall constructed as part of the work collapsed. The proceedings for fixing liability is said to be pending and it is hence the final bill has not been paid is the contention. The Government has also filed an additional counter affidavit, in which it had been stated that the petitioner has filed a suit numbered as

O.S No.752 of 2010 before the Sub Court, Kottayam.

3. The learned Counsel appearing for the petitioner would submit that this is with respect to the damages and not interest payable. The petitioner having not raised the claim of interest in the suit filed, the petitioner cannot raise it in a petition under Article 226 of the Constitution of India. The specific statement as to the liability having been caused by a collapsed retaining wall, has also not been controverted. In such circumstance, this Court is not inclined to exercise the extra ordinary jurisdiction to grant any interest to the petitioner.

The writ petition would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge.