

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

WP(C).No. 34600 of 2007 (S)

AGAINST THE ORDER IN OP 564/2005 of FAMILY COURT,KOZHIKODE

PETITIONER:

C.K.MOHAMMED HAJEE, AGED 52 YEARS,
S/O.LATE CHATHAMKANDI HUSSAIN HAJEE, 'ARAF MANZIL"
POST GURUVAYURAPPAN COLLEGE,
PANTHEERANKAVU AMSOM, PALAZHI DESOM, KOZHIKODE TALUK.

BY ADVS.SRI.C.P.MOHAMMED NIAS
SRI.B.PREMNATH (E)

RESPONDENTS:

1. C.K.SAREENA, AGED 43 YEARS,
D/O.C.P.AHMED, MUKKOLAKKAL HOUSE, BEACH ROAD
POST VATAKARA, KOYILANDI TALUK, KOZHIKODE DISTRICT
NOW RESIDING AT: "ARAF MANZIL"POST GURUVAYURAPPAN
COLLEGE, PANTHEERANKAVU AMSOM PALAZHI DESOM,
KOZHIKODE TALUK.

2. THE REGISTRAR, SUB REGISTRAR'S OFFICE,
CHEVAYUR, KOZHIKODE.

R1 BY ADV. SRI.P.R.SREEJITH
R2 BY GOVERNMENT PLEADER SRI.JOBY JOSEPH

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

WP(C) .No. 34600 of 2007 (S)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF JUDGMENT DATED 14.2.2007 IN WPC.NO.30436/2006 BY THIS COURT.

EXT.P2 COPY OF IA.NO.1560/2007 IN OP.NO.564/05 9IN FAMILY COAURT, KOZHIKODE FOR APPROVING AND ACCEPTING DRAFT SECURITY BOND.

/TRUE COPY/

P.S TO JUDGE

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C.K.ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
W.P.(C)No.34600 of 2007
.....

Dated this the 6th day of July, 2015.

JUDGMENT

Abdul Rehim, J:

This writ petition under Article 227 of the Constitution of India is filed seeking direction to the Family Court, Kozhikode to accept Ext.P2 security bond offered in I.A.No.1560/2007 in OP.No.564/2005. The petitioner herein is the respondent in O.P.No.564/2005 before the Family Court. The Family Court required the petitioner to furnish security for the plaint claim, in an application submitted by the respondent herein, who is the petitioner before the Family Court, seeking attachment before judgment. The original petition is filed for realization of an amount of ₹18,00,000/- alleged to be due from the petitioner. Initially an ad interim order of attachment was passed by the Family Court, which was subsequently lifted after hearing the parties through the order passed on 25.9.2006. The said order was challenged by the first respondent herein in a writ petition filed before this Court as W.P.(C) No.30436/2006. The said writ petition was disposed of through Ext.P1 judgment by directing the petitioner to furnish security

to the satisfaction of the court below, within a period of two weeks. Subsequently the petitioner submitted Ext.P2 security bond before the Family Court. The present writ petition is filed when the said security bond was not accepted.

2. It is evident that, pursuant to the non-acceptance of Ext.P2 security bond, the court below had struck off the defence in OP.No.564/2005 and on that basis the ex parte decree was already passed in OP.No.564/2005. The petitioner herein had challenged the judgment and decree in an appeal filed before this Court as Mat.A.No.71/2008.

We are of the considered opinion that the non- acceptance of security bond and the consequent striking off defence are matters which can be agitated in the appeal filed against the final judgment and decree.

Therefore, this writ petition is hereby dismissed by reserving liberty to the petitioner to raise all such contentions in the appeal filed against the final judgment.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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