

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 28254 of 2015 (F)

PETITIONER(S) :

- 1. SHEJIN K.K, AGED 26 YEARS,
S/O.KAREEM, KIZHAKKEKARA, KAKKANADU P.O.,
KAKKANADU VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.**
- 2. ELDHO PAUL, AGED 34 YEARS,
S/O.POULOSE, NANGETH HOUSE, THENGODE P.O.,
KAKKANADU VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S) :

- 1. FERTILISERS AND CHEMICALS TRAVANCORE LIMITED (FACT)
(A GOVERNMENT OF INDIA ENTERPRISES), FACT P.D,
ADMINISTRATION BUILDING, UDYOGAMANDAL, KOCHI-683 501,
REPRESENTED BY ITS GENERAL MANAGER.**
- 2. THE PLANT MANAGER,
FACE II, PHOSPHOROUS PLANT, FACT COCHIN DIVISION,
ERNAKULAM DISTRICT-683 501.**
- 3. PLANET CONSTRUCTION,
THELEPARAMBIL BUILDING, NEAR KOTTARAM PARK,
MARAUD P.O., ERNAKULAM DISTRICT- 682 304,
REPRESENTED BY ITS MANAGER, MR.SUDHEESH K.M, S/O.MANI,
KATTIKUDIYIL HOUSE, AIRAPURAM P.O, ERNAKULAM DISTRICT.**

**R1 & R2 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1:** TRUE COPY OF THE RETAIL INVOICE OF THE HITACHI 110 MACHINE WITH SERIAL NO.1101-320 ISSUED BY THE AUTHORIZED DEALER TO MR.SIDDIQUE DATED 25/09/2009.
- EXT.P2:** TRUE COPY OF THE AGREEMENT DATED 20/06/2015 EXECUTED BETWEEN MR.SIDDIQUE AND FIRST PETITIONER REGARDING HITACHI 110 MACHINE.
- EXT.P3:** TRUE COPY OF THE INVOICE OF MACHINE ISSUED TO THE AUTHORIZED DEALER TO MR.RAJEEVAN DATED 27/12/2010.
- EXT.P4:** TRUE COPY OF THE AGREEMENT DATED 17/06/2014 EXECUTED BETWEEN MR.RAJEEVAN AND SECOND PETITIONER REGARDING HITACHI 110 MACHINE .
- EXT.P5:** TRUE COPY OF THE CONTRACT EXECUTED BETWEEN THE THIRD RESPONDENT AND FIRST RESPONDENT DATED 30/09/2014.
- EXT.P6:** TRUE COPY OF THE WORK ORDER ISSUED BY THE THIRD RESPONDENT TO THE FIRST PETITIONER DATED 06/08/2015.
- EXT.P7:** TRUE COPY OF THE WORK ORDER ISSUED BY THE THIRD RESPONDENT TO THE SECOND PETITIONER DATED 01/08/2015.`
- EXT.P8:** TRUE COPY OF THE REPRESENTATION DATED 07/09/2015 SUBMITTED BY THE FIRST PETITIONER BEFORE THE SECOND RESPONDENT.
- EXT.P9:** TRUE COPY OF THE REPRESENTATION DATED 07/09/2015 SUBMITTED BY THE SECOND PETITIONER BEFORE THE SECOND RESPONDENT.
- EXT.P10:** TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE THIRD RESPONDENT TO THE FIRST RESPONDENT DATED 07.09.2015.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.28254 of 2015

Dated this the 8th day of October, 2015

JUDGMENT

The petitioners are, respectively, owners of two Hitachi machines with serial nos.1101-3201 and 1101-4024. The 3rd respondent hired the same for removing gypsum and other materials from the plant of 1st respondent, as per a contract with the first respondent. The petitioners submit that the machines have been detained by the 1st respondent on account of a dispute between them.

2. The 3rd respondent would submit that there is no objection to release these machines to the petitioners. Therefore, when the petitioners approached the 1st respondent, it was informed that the machines would be released only when the dispute between the first and third respondents has been settled.

3. The question is whether the 1st respondent has a right to detain these machines. It is stated that the 3rd respondent violated the contract causing huge loss to the

1st respondent and it is on account of recovering the loss, they kept the machines in their premises.

4. However, it is not discernible whether there are any enabling provisions in the terms of the contract to detain the machines. In the absence of any provisions of the contract, this Court is of the view that without prejudice to the right of the 1st respondent to initiate proceedings against the 3rd respondent for any loss sustained by them, the Hitachi machines with serial nos.1101-3201 and 1101-4024 shall be released to the petitioners. The 3rd respondent has no objection to the release of the vehicles, as has been recorded in this judgment. Needful shall be done within one week from the date of receipt of a certified copy of this judgment.

The writ petition is disposed of.

Sd/-

**A.MUHAMED MUSTAQUE
JUDGE**

AD