

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 36002 of 2015 (A)

PETITIONER:

**M/S K.K.BUILDERS,
CIVIL ENGINEERING CONTRACTORS,
PERAVOOR, KANNUR - 670 673,
REPRESENTED BY ITS MANAGING PARTNER
K.K.RADHAKRISHNAN.**

BY ADV. SRI.S.ARUN RAJ

RESPONDENT(S):

- 1. THE INTELLIGENCE OFFICER, SQUAD NO.3,
COMMERCIAL TAXES, PALAKKAD - 678 001.**
- 2. INTELLIGENCE OFFICER, SQUAD NO.IV,
OFFICE OF THE INSPECTING ASST. COMMISSIONER
(INTELLIGENCE), COMMERCIAL TAXES, KANNUR - 670 002.**
- 3. THE DEPUTY COMMISSIONER(APPEALS),
COMMERCIAL TAXES, KOZHIKODE - 673 006.**
- 4. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM - 695 001.**
- 5. THE MANAGER, FEDERAL BANK LTD,
THALASSERY BRANCH, KANNUR - 670 101.**
- 6. MR.G.SURYANARAYANAN, S/O.GOVINDAN,
DESAGAPATTI, PARIASORAGAI(PO), METTUR TK,
SALEM DISTRICT, TAMILNAD-636 453.**

R1 TO R4 BY GOVERNMENT PLEADER SMT.LILLY.K.T

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE ORDERS & WORK AGREEMENTS
DATED 30.10.2012 AND 9.6.2015 ISSUED BY THE SUPERINTENDING
ENGINEER, MINOR IRRIGATION DEPARTMENT, KOZHIKODE IN FAVOUR
OF THE PETITIONER.
- EXT. P2 : TRUE COPY OF THE HIRE AGREEMENT DATED 15.12.2014 EXECUTED
BETWEEN THE PETITIONER AND THE 6TH RESPONDENT FOR THE
HYDRAULIC CRANE ALONG WITH THE SUBSEQUENT ENDORSEMENT
MADE ON 30.5.2015.
- EXT. P3 : TRUE COPY OF THE NOTICE DATED 20.12.2014 ISSUED UNDER
SECTION 47(2) OF THE ACT.
- EXT. P4 : TRUE COPY OF THE REPLY DATED 24.12.2014 SUBMITTED BY THE
PETITIONER TO THE 1ST RESPONDENT.
- EXT. P5 : TRUE COPY OF THE BANK GUARANTEE EXECUTED ON 24.12.2014 BY
THE FEDERAL BANK LTD, THALASSERY BRANCH, KANNUR.
- EXT. P6 : TRUE COPY OF THE RELEASE ORDER DATED 24.12.2014 ISSUED BY
THE 1ST RESPONDENT.
- EXT. P7 : TRUE COPY OF THE NOTICE DATED 23.9.2015 ISSUED BY THE
2ND RESPONDENT TO THE PETITIONER.
- EXT. P8 : TRUE COPY OF THE REPLY LETTER DATED 5.10.2015 SUBMITTED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT. P9 : TRUE COPY OF THE ORDER DATED 17.11.2015 ISSUED BY THE
2ND RESPONDENT IMPOSING PENALTY UNDER SECTION 47(2) OF THE
ACT.
- EXT. P10 : TRUE COPY OF THE LETTER DATED 21.11.2015 ISSUED BY THE
2ND RESPONDENT TO THE 5TH RESPONDENT BANK.
- EXT. P11 : TRUE COPY OF THE APPEAL MEMORANDUM FILED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT. P12 : TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER
BEFORE THE 3RD RESPONDENT.

RESPONDENTS' EXHIBIT: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.36002 of 2015

Dated this the 27th day of November 2015

JUDGMENT

Against Ext. P9 penalty order passed by the 2nd respondent, the petitioner has preferred Ext.P11 appeal and Ext.P12 stay petition before the 3rd respondent. The grievance of the petitioner in the writ petition is essentially that even before considering the stay petition, the respondents are initiating proceedings for recovery of the amounts confirmed against the petitioner by Ext.P9 order, including steps for realisation of the bank guarantee, that was furnished by the petitioner during the pendency of proceedings before the 2nd respondent.

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

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I dispose the writ petition with the following directions:

- i) The 3rd respondent shall consider and pass orders on Ext.P12 stay petition within a period

of one month from the date of receipt of a copy of this judgment, after hearing the petitioner.

ii) Recovery steps for recovery of amounts confirmed against petitioner by Ext.P9 penalty order, including further steps pursuant to Ext.P10, shall be kept in abeyance till orders are passed by the 3rd respondent as directed above and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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