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Joseph Vs. State of Kerala

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Court : Kerala

Decided On : Dec-20-2013

Judge : Honourable Mr.Justice P.N.Ravindran

Appellant : Joseph

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN FRIDAY, THE20H DAY OF DECEMBER201329TH AGRAHAYANA, 1935 OP(C).No. 4416 of 2013 (O) ---------- AGAINST THE

JUDGMENT
IN OS782008 of SUB COURT,THODUPUZHA PETITIONER/PETITIONER/DECREE HOLDER: ---------- JOSEPH, AGED60YEARS S/O.JOHN, KARIPPUKATTIL HOUSE, CHERADI KARA MOOLAMATTAM EAST P.O., ARAKKULAM VILLAGE. BY ADV. SRI.T.J.MICHAEL RESPONDENT(S)/RESPONDENTS/DEFENDANTS/

JUDGMENT
DEBTORS: ---------- 1. STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, IDUKKI CIVIL STATION, PAINAVU, IDUKKI - 685 603.

2. SUPERINTENDENTING ENGINEER, PUBLIC WORKS DEPARTMENT (ROADS DIVISION) ALUVA CIRCLE ALUVA, ERNAKULAM DISTRICT - 683 101.

3. EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT (ROADS DIVISION), IDUKKI PAINAVU - 685 603.

4. SAJEEV MATHEW, CHERUMATTATHIL, CHERUMATTAM PLAZA MUVATTUPUZHA - 686 661. R1-R3 BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN R4 BY ADV. SRI.SAIBY JOSE KIDANGOOR THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON2012-2013, ALONG WITH WPC. 18072/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 4416 of 2013 (O) ---------- APPENDIX PETITIONER(S)' EXHIBITS ---------- EXHIBIT P1 : COPY OF THE CHEQUE APPLICATION DATED EXHIBIT P2 : TRUE COPY OBJECTION TO CHEQUE APPLICATION DATED NIL EXHIBIT P3 : TRUE COPY OF STATUS QUO

ORDER
IN WP(C) 18072/2013 DATED1907.2013 EXHIBIT P4 : TRUE COPY OF WRIT PETITION NO.18072/13 WITH OUT EXHIBITS DATED1607.2013 EXHIBIT P5 : TRUE COPY OF EXHIBIT P6 IN WP(C) 18072/13 DATED0706.2013 RESPONDENT(S)' EXHIBITS: NIL RKC/G. TRUE COPY PA TO JUDGE. P.N.RAVINDRAN, J.

---------- O.P.(C).No.4416 of 2013 ---------- Dated this the 20th day of December, 2013

JUDGMENT
The petitioner is the decree holder in O.S.No.78 of 2008 on the file of the Court of the Subordinate Judge of Thodupuzha. The respondents are the judgment debtors therein. The suit instituted by the petitioner for realisation of the sum of 8,00,000/- by way of damages with interest and costs was decreed in part and he was allowed to realise from the respondents the sum of 6,30,711/- with interest at 12% per annum from the date of the suit and costs of the suit. Though the State of Kerala had filed R.F.A.No.850 of 2011 in this Court accompanied by an application to condone the delay of 203 days in filing the appeal, the application to condone

delay was dismissed. Consequently the appeal was also dismissed. During the course of arguments before this Court the State of Kerala raised a contention that the liability to discharge the debt is that of the contractor (the fourth respondent) and not that of the State of Kerala. Taking note of that contention this Court observed in the oder dismissing the application to condone delay as well as the appeal that, that is a matter which can be dealt with by the State in accordance with the provisions contained in the contract between the parties. The Superintendent Engineer who is the second O.P.(C).No.4416 of 2013 ..2.. judgment debtor in the suit thereupon issued Ext.P5 proceedings dated 7.6.2013 whereby he directed that the sum of 1,25,340/- being the amount payable to the petitioner herein under the decree passed in the suit be recovered from the pending bill of the fourth respondent. The said order is under challenge in W.P.(C) No.18072 of 2013 filed by the fourth respondent in this Court. In that writ petition this Court has passed an interim order directing maintenance of status quo and the said order is even today in force. The petitioner herein is admittedly not a party to the said writ petition. The grievance voiced in the instant original petition is that in view of the pendency of W.P.(C) No.18072 of 2013 notwithstanding the fact that judgment debtors 1 to 3 have deposited the sum of 10,02,830 after deducting the tax payable on the sum of 10,25,348/- the cheque application filed by him on 7.10.2013 is kept pending. In this original petition the petitioner prays for an order directing the trial court to allow the cheque application. In the alternative he prays for an order directing the execution court to expeditiously dispose of the cheque application.

2. Heard Sri.T.J.Michael, learned counsel appearing for the petitioner, Sri.Liju V.Stephen, learned Government Pleader appearing for respondents 1 to 3 and Sri.Saiby Jose Kidangoor, learned counsel appearing for the fourth respondent. Though the O.P.(C).No.4416 of 2013 ..3.. learned counsel appearing for the fourth respondent contended that respondents 1 to 3 cannot recover the decree debt in O.S.No.78 of 2008 from the amount payable to M/s.Sajiv Mathew of which the fourth respondent is the managing partner and therefore Ext.P5 order produced in the instant original petition which is under challenge in W.P.(C) No.18072 of 2013 is liable to be set aside, I am of the opinion that the petitioner herein need not wait till the dispute interse between respondents 1 to 3 on the one hand and the fourth

respondent on the other hand involved in W.P.(C) No.18072 of 2013 is heard and disposed of. The decree under which the petitioner claims the amount covered by the cheque has attained finality. Respondents 1 to 4 cannot therefore challenge the entitlement of the petitioner to receive payment of the amount deposited by judgment debtors 1 to 3. The question whether judgment debtors 1 to 3 are realise the amount deposited by them from the money payable to the firm of the petitioner of which the fourth respondent is a partner or whether the fourth respondent is liable at all to repay the said amount is a matter which will have to be decided in W.P.(C) No.78072 of 2013. That dispute cannot in my opinion stand in the way of the petitioners herein from enjoying the fruit of ..... I am therefore of the considered opinion that the cheque application filed by the petitioners herein (the decree holder O.P.(C).No.4416 of 2013 ..4.. in O.S.No.78 of 2008 on the file fo the Court of the Subordinate Judge of Thodupuzha) should be forthwith allowed. I accordingly dispose of the original petition with a direction to the Court of the Subordinate Judge of Thodupuzha to forth with allow the application for cheque application filed by the petitioner and issue the cheque on the petitioner producing a certified copy of this judgment. Registry to issue a certified copy of this judgment to learned counsel on both sides, if applied for, today itself. sd/- P.N.RAVINDRAN, JUDGE. rkc.

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