

The Manager vs Mohanan S

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Court : Kerala

Decided On : Feb-20-2024

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr. Justice G.Girish

Appeal No. : Con.APP(C)/4/2022

Appellant : The Manager

Respondent : Mohanan S

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR. JUSTICE G.GIRISH TUESDAY, THE 20TH DAY OF FEBRUARY 2024 / 1ST PHALGUNA, 1945 CON.APP(C)NO.4 OF 2022 ARISING FROM THE JUDGMENT DATED 05.07.2022 IN CON.CASE(C)NO.1199 OF 2021 IN W.P.(C)No.4560 OF 2020 OF HIGH COURT OF KERALA APPELLANT/ADDL. 3RD RESPONDENT: THE MANAGER, KERALA STATE CO-OPERATIVE BANK, ERNAKULAM UNIT, PIN - 682016 BY ADV P.C.SASIDHARAN RESPONDENTS/PETITIONER, 1ST RESPONDENT & ADDL.2ND RESPONDENT:

1 MOHANAN S., AGED 53 YEARS, S/O. VASUDEVAN, PURTHURETHU HOUSE, OLAKETTIYAMBALAM P.O, ALAPPUZHA DT., PIN - 690510 2 JAYAKUMARI, THE SECRETARY, THE KERALA STATE DEFENCE SERVICES CO- OPERATIVE HOUSING SOCIETY LTD., ANJIPARAMBIL BUILDINGS, ANANAD BAZAR, SOUTH RAILWAY STATION ROAD, ERNAKULAM, PIN-682 016 3 ADDL. R2-SARATH SIVANANDAN, ADMINISTRATOR, THE KERALA STATE DEFENSE SERVICES CO- OPERATIVE HOUSING SOCIETY LTD., ANJIPARAMBIL BUILDINGS, ANAND BAZAR, SOUTH RAILWAY STATION ROAD, ERNAKULAM, PIN - 682016 BY ADVS. SUNNY XAVIER JOHN JOSEPH(ROY) M.R. NANDAKUMAR M.R. MAYIKA SUNDAR(K/000929/2020) ARJUN ANIL(K/000637/2021) ASIN V.S.(K/001865/2022)

THIS CONTEMPT APPEALS (CIVIL) HAVING COME UP FOR ADMISSION ON 20.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J The appellant, who was impleaded as additional 3rd respondent in Cont. Case (C)No.1199 of 2021, arising out of the

judgment of the learned Single Judge dated 11.01.2021 in

W.P.(C)No.4560 of 2020, has filed this contempt appeal, invoking the provisions under Section 19(1) of the Contempt of Courts Act, 1971, challenging that judgment dated 11.01.2021 in W.P.(C)No.4560 of 2020 (Annexure C) and the order dated 05.07.2022 in Cont. Case (C)No.1199 of 2021 (Annexure D), whereby the contempt petition was closed with a direction to the Registrar of Co-operative Societies to execute necessary release deed in favour of the 1st respondent herein (writ petitioner), in view of the fact that the entire dues have already been cleared. It was made clear that if Kerala State Defence Services Co-operative Housing Society has not remitted the amount to Kerala State Co- operative Bank, Annexure D order will not come in the way of the bank in initiating recovery steps

against the Housing Society, in accordance with law.

2. This appeal is one filed along with C.M. Application No.1 of 2022 for condonation of filing delay of 23 days, which was

condoned by the order dated 08.12.2022. On that day, notice in the contempt appeal was issued to respondents 1 to 3 by speed post. While ordering the appeal to be listed on 12.01.2023, this Court granted an interim stay, which reads thus;

In the meanwhile, there will be a stay of the direction in the impugned judgment that directs the Joint Registrar of Co- operative Societies, to execute the release deed in respect of the document of title submitted by the first respondent at the time of availing loan from the Kerala State Defense Services Co-operative Housing Society Ltd, which was re-financed by the District Co-operative Bank, Ernakulam on the security of the title deed furnished by the first respondent.

3. Heard the learned counsel for the appellant, the learned counsel for the 1st respondent and also the learned counsel for the 3rd respondent, who was the Administrator of the Housing Society.

4. During the course of arguments, it is submitted by the

learned counsel for the appellant and also the learned counsel for the 1st respondent that the title deed of the 1st respondent has already been released on 28.09.2022, even before the filing of this contempt appeal and the 3rd respondent, the then Administrator of Kerala State Defence Services Co-operative Housing Society has already executed a release deed on 28.09.2022.

5. Having considered the submissions made at the Bar, we

find that the appellant cannot challenge Annexure C judgment of the learned Single Judge dated 11.01.2021 in W.P.(C)No.4560 of 2020 in this contempt appeal filed under Section 19(1) of the Contempt of Courts Act, for which the appellant ought to have filed a writ appeal under Section 5 of the Kerala High

Court Act. Insofar as the challenge made against Annexure D order is concerned, though we find that the direction contained in Annexure D

judgment in Cont. Case (C)No.1199 of 2021 was beyond the scope

of contempt jurisdiction, considering the fact that, in terms of that direction, the title deed of the 1st respondent has already been released and a release deed has also been executed by the 3rd respondent, who was the then Administrator of the Housing Society, we decline interference on Annexure D order dated 05.07.2022 of the learned Single Judge.

The contempt appeal fails for the aforesaid reason and the same is accordingly dismissed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- G. GIRISH, JUDGE MIN
APPENDIX OF CON.APP(C) 4/2022 PETITIONER ANNEXURES ANNEXURE A
TRUE COPY OF THE RESOLUTION NO.45 DATED GRANTING LOAN ALONG
WITH ITS ENGLISH TRANSLATION ANNEXURE B TRUE COPY OF THE
CONSENT LETTER GIVEN BY THE HOUSING SOCIETY ALONG WITH ITS
ENGLISH TRANSLATION ANNEXURE C TRUE COPY OF THE JUDGMENT
DATED ANNEXURE D CERTIFIED COPY OF THE JUDGMENT IN CON. CASE
NO.1199 OF 2021 DATED 5/07/2022 RESPONDENT ANNEXURES ANNEXURE
R3(A) A TRUE COPY OF THE RELEASE DEED EXECUTED IN FAVOUR OF
1ST RESPONDENT ANNEXURE R3(B) A TRUE COPY OF THE PROPOSAL
SENT BY ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,
KANAYANNUR

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