

Venu vs Kannan

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Court : Kerala

Decided On : Jun-02-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : OP(C)/1125/2023

Appellant : VENU

Respondent : Kannan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
FRIDAY, THE 2ND DAY OF JUNE 2023 / 12TH JYAISHTA, 1945
AGAINST THE ORDER DATED 10/01/2023 IN E.A.NO.299/2022 IN
E.A.NO.141/2022 IN E.P.NO.117/2018 IN O.S.NO.5/2017 OF
PRINCIPAL MUNSIF COURT, ALAPPUZHA
PETITIONER/PETITIONER/PETITIONER/JUDGMENT
DEBTOR/DEFENDANT: VENU, AGED 54 YEARS, S/O NARAYANAN,
MUTHUMPADATH HOUSE, ARYAD SOUTH, AVALOOKKUNNU P.O.,
BY ADVS. S.SHANAVAS KHAN S.INDU KALA G.NAMBIAR
RESPONDENT/RESPONDENT/RESPONDENT/DECREE
HOLDER/PLAINTIFF: KANNAN, AGED 46 YEARS, S/O LATE

PUSHPANGATHAN, NIKARTHIL HOUSE, ARYAD SOUTH, AVALOOKKUNNU P.O., THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 02.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

In execution of a money decree, the property of the judgment-debtor was put in court auction and bid the property by the decree holder with permission. The sale was subsequently confirmed. Sale Certificate was also issued. It is thereafter the judgment debtor came up with an application under Rule 106 of Rule XXI C.P.C., that too, at the stage of delivery of the property. It was dismissed by the execution court under Ext.P6 order. Rule 106 of Order XXI C.P.C. would come

into play only with respect to an ex parte order

passed under Sub-Rule (2) of Rule 105 or under Sub-Rule (3) of that Rule or under Sub-Rule (1)

of Rule 23. Sub-Rule(2) is dealing with an order

of dismissal of an application when the applicant does not appear on the day fixed for its hearing. Sub-Rule (3) would come into play when the opposite party does not appear in spite of notice and court may pass an order of ex parte. Sub- Rule (1) of Rule 23 is dealing with issuance of a notice under Rule 22 and the consequences thereof. The present matter would not come under any of the abovesaid provisions and as such, there is no error in the exercise of jurisdiction and hence does not call for interference under Article 227 of the Constitution. The O.P.(C) will stand dismissed. Sd/- P.SOMARAJAN JUDGE rkr-02/06/23
APPENDIX OF OP(C) 1125/2023 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE AWARD PASSED BY THE LOK ADALATH CONDUCTED BY DISTRICT LEGAL SERVICES AUTHORITY, ALAPPUZHA ON 06/12/2017 Exhibit P2 A TRUE COPY OF THE PROCEEDINGS IN

E.P.117/2018 ON THE FILES OF THE PRINCIPAL MUNSIFF'S COURT, ALAPPUZHA AS OBTAINED FROM THE OFFICIAL WEBSITE OF E-COURTS SERVICES

Exhibit P3

A TRUE COPY OF E.A.NO.299/2022 DATEDExh

THIS HON'BLE COURT IN O.P.(C) NO. 2273/2022 Exhibit P6 A TRUE COPY OF ORDER DATED 10/01/2023 IN E.A.NO.299/2022 IN E.P.NO.117/2018 ON THE FILES OF THE HON'BLE PRINCIPAL MUNSIFF'S COURT, ALAPPUZHA Exhibit P7 A TRUE COPY OF PROCEEDINGS IN E.A.NO.141/2022 IN E.P.NO.117/2018 ON THE FILES OF THE HON'BLE PRINCIPAL MUNSIFF'S COURT, ALAPPUZHA AS OBTAINED FROM THE OFFICIAL WEBSITE OF E- COURTS SERVICES RESPONDENT EXHIBIT NIL TRUE COPY P.A.TO JUDGE

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