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Tomy Sebastian vs Mini Harikumar

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SooperKanoon Citation : sooperkanoon.com/1603687

Court : Kerala

Decided On : Mar-31-2021

Judge : Honourable Mr.Justice T.V.Anilkumar

Appeal No. : OP(C)/382/2021

Appellant : Tomy Sebastian

Respondent : Mini Harikumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943 OP(C).No.382 OF 2021 AGAINST THE COMMON ORDER IN IA 1/2020 IN IA 8685 OF 2017 IN OS 1379/2017 DATED 15-01-2021 OF III ADDITIONAL MUNSIFF COURT(RENT CONTROL), EKM PETITIONERS/RESPONDENTS/PETITIONER/PLAINTIFFS:

1 TOMY SEBASTIAN AGED 55 YEARS S/O. MANI DEVASSYA, VENGACKAL HOUSE, THUTHIYOOR, KAKKANAD KARA, KAKKANAD P.O., KAKKANAD VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT,PIN-682 030 2 JOLLY TOMY SEBASTIAN AGED 50 YEARS

W/O. TOMY SEBASTIAN, VENGACKAL HOUSE, THUTHIYOOR, KAKKANAD KARA, KAKKANAD P.O., KAKKANAD VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT,PIN-682 030 BY ADVS. SRI.K.S.FRIJO SRI.S.HIRUSHEEKESAN SRI.SOLOMAN BABY

RESPONDENT/PETITIONER/RESPONDENT/DEFENDANT: MINI HARIKUMAR W/O. HARIKUMAR, AGED 50 YEARS, LIC AGENT,THUNDIL HOUSE, KAKKANADU KARA, ATHANI, KUSUMAGIRI P.O., KAKKANAD VILLAGE, KANAYANNIUR TALUK, ERNAKULAM DISTRICT,PIN-682 030 BY ADV. SRI.BIJU ABRAHAM THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-032021, THE COURT ON 31-03-2021 DELIVERED THE FOLLOWING: :-2-: Dated this the 31st day of March, 2021

J U D G M E N T

The plaintiffs in O.S.No.1379/2017 on the file of Third Additional Munsiff, Ernakulam, are the petitioners in this original petition.

2. The sole defendant in the suit offered security for an amount of Rs.5,50,000/- being the

principal plaint amount seeking to vacate

decree that may be passed in the suit, since the suit claim includes 18% of interest per annum also.

I.A.No.1/2020 filed by the defendant for an order

seeking acceptance of security, was allowed rejecting the objections raised by the plaintiffs.

3. The impugned order dated 15.1.2021 passed :-3-: in this respect is under challenge in this original petition.

4. I heard the learned counsel for the petitioners as well as the learned counsel for the respondent.

5. The contention of the petitioners is that unless the value of security covers not only the proposed plaint amount but interest also, the plaintiffs/petitioners may not be able to enjoy the decree that may be passed in the suit.

6. The learned counsel for the respondent sought to sustain the impugned order contending that what the Order XXXVIII Rule 5 of CPC provides is for furnishing of security for the plaint amount which cannot include pendente lite interest. In

order to support his contention, he relied on a

decision reported in Smitha v. P.C.Varghese & anr. (2016(2) KHC 793). :-4-:

7. I went through the aforesaid decision which does not lay down any such law as canvassed by the learned counsel for the respondent.

8. It is obvious from the Scheme underlying

Chapter XXXVIII and Rules 5 and 6 therein that the defendant, who seeks to get rid of an order of conditional attachment before judgment, has to furnish such an amount of security as is enough to satisfy the decree. The decree presupposes the entire suit claim which includes interest as well.

9. Of course, what could be the rate of

interest which the court may be empowered in the suit is a different question. In the present suit, the plaintiff has claimed 18% of interest. That is a matter which has to be decided by the court below concerned, having regard to the questions of law and facts. The plaintiff in the suit has to establish a prima facie case in regard to the claim :-5-: for interest pendente lite.

10. The court below has not applied its mind on this aspect while passing the impugned order. The view that the security amount shall stand limited solely to the principal plaint amount, cannot be endorsed.

11. Having heard the submissions made by the learned counsel appearing on both sides, I am of

the view that the impugned order cannot be sustained and the matter has to go back to the court below for fresh consideration in the light of the view expressed above.

In the result, original petition succeeds and the impugned order is set aside. The court below shall fix the amount of security liable to be furnished inclusive of the pendente lite interest, after hearing the parties on either side. A decision in this respect shall be taken by the :-6-: court below as expeditiously as possible and dispose of the application for attachment before

judgment.

All pending interlocutory applications are closed. Sd/- T.V.ANILKUMAR JUDGE ami/ :-7-: APPENDIX PETITIONERS' EXHIBITS: EXHIBIT P1 THE TRUE COPY OF THE PLAINT FILED BY THE PETITIONERS IN OS NO.1379 OF 2017 ON THE FILES OF 3RD ADDITIONAL MUNSIFF'S COURT, ERNAKULAM EXHIBIT P2 THE TRUE COPY OF ATTACHMENT PETITION FILED BY THE PETITIONERS IN IA NO.8685 OF 2017 IN OS NO.1379 OF 2017 DATED 18.12.2017 ON THE FILES OF 3RD ADDITIONAL MUNSIFF'S COURT, ERNAKULAM EXHIBIT P3 THE TRUE COPY OF WRITTEN STATEMENT IN OS NO.1379 OF 2017 FILED BY THE RESPONDENT ON THE FILES OF 3RD ADDITIONAL MUNSIFF'S COURT, ERNAKULAM EXHIBIT P4 THE TRUE COPY OF IA NO.1 OF 2020 IN IA NO.8685 OF 2017 IN OS NO.1379 OF 2017 ON THE FILES OF 3RD ADDITIONAL MUNSIFF'S COURT, ERNAKULAM FILED BY THE RESPONDENT EXHIBIT P5 THE TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS TO IA NO.1 OF 2020 IN IA NO.8685 OF 2017 IN OS NO.1379 OF 2017 EXHIBIT P6 THE TRUE COPY OF THE IMPUGNED ORDER IN IA NO.1 OF 2020 IN IA NO.8685 OF 2017 IN OS NO.1379 OF 2017 DATED 15.01.2021 PASSED BY THE 3RD ADDITIONAL MUNSIFF'S COURT, ERNAKULAM

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