

B.Sasikumar and Another vs Prema and Others

B.Sasikumar and Another vs Prema and Others

SooperKanoon Citation : sooperkanoon.com/1671434

Court : Kerala

Decided On : Jul-30-2021

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/5682/2008

Appellant : B.Sasikumar and Another

Respondent : Prema and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943 WP(C)
NO. 5682 OF 2008 AGAINST THE ORDER/JUDGMENT IN OPMV
935/1985 OF SPECIAL COURT FOR EC ACT CASES & MOTOR
ACCIDENT CLAIMS TRIBUNAL ,TSR, THRISSUR PETITIONERS: 1
B.SASIKUMAR GURUVAYOOR AMSOM, GURUVAYUR DESOM,
CHAVAKKAD TALUK. 2 B.NANDAKUMAR PARTNER BALAKRISHNA
TRANSPORT, GURUVAYUR. BY ADVS. SRI.ANIL SIVARAMAN
SRI.HARIKRISHNAN RAVINDRAN RESPONDENTS:

1 PREMA, W/O. LATE RAMACHANDRAN, VIRUTHIPARAMBIL HOUSE, MATATHUR VILLAGE, KODALI DESOM, MUKUNDAPURAM TALUK, NOW RESIDING AT IRINJALAKUDA. 2 SILIN S/O.LATE RAMACHANDRAN -DO- 3 LAKSHMI D/O.LATE RAMACHANDRAN -DO- 4 KALYANI W/O.VIRUTHIPARAMBIL KOCHAKKAN MOTHER OF LATE RAMACHANDRAN. 5 THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR. ADDL.R6 THE NEW INDIA ASSURANCE COMPANY LTD ERNAKULAM BRANCH REP. BY THE REGIONAL MANAGER, THE NEW INDIA ASSURANCE COMPANY LTD, REGIONAL OFFICER, KANDANKULATHIL TOWERS, MG ROAD, ERNAKULAM, COCHIN-11 ADDL.R6 IS IMPEADED AS PER ORDER DATED 30.07.2021 IN IA 1/2021. BY ADV.SMT.MABLE C.KURIAN, GOVT.PLEADER, ADV.LAL.K.JOSEPH, SC, INSURANCE COMPANY SRI.K.JAYAKUMAR SRI.P.B.KRISHNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: The case number of Special Court occurring in the cause title of judgment dated 30.07.2021 in WP(C) 5682/2008(B) is corrected as OPMV 953/1985 as per order dated 27.08.2021 in IA 3/2021 in WP(C) 5682/2008(B). sd/- Assistant Registrar

P.V.KUNHIKRISHNAN, J.

----- W.P.(C).No.5682 of 2008
----- Dated this the 30th day of July, 2021

JUDGMENT

Respondent Nos.1 to 4, who obtained an award from a Motor Accident Claims Tribunal, is trying to execute the same to get the entire compensation amount. Three and half decades over after they filed the claim petition. Even now the matter is not finally disposed. This Court stayed the execution proceedings in 2008. The matter is pending before this Court for about 13 years. Is it a failure of our system ? An introspection may be necessary. I don't want to make any further

observation on this.

2. The short facts are like this: Respondents 1 to 4 obtained an award in OP(MV) No.953/1985 from the Motor Accidents Claims Tribunal, Thrissur. The award was modified by this Court as per

judgment dated 21.03.1997 in M.F.A.No.803 of 1988. This

Court found that the insurance company is liable only to the extent of the Act liability so far as the 3rd parties are concerned and the insured M/s.Balakrishna Transport, Guruvayoor is liable to pay the balance of Rs.95,000/- with proportionate interest and costs. When Ext.P1 execution petition was filed by the claimants, who are respondent Nos.1 to 4 herein, the petitioners filed Ext.P3 series raising several contentions. Subsequently execution petition was dismissed for default and thereafter Ext.P4 was filed. According to the petitioners, their prayer to decide the maintainability of Execution Petition was not decided properly. Ultimately Ext.P5 order was passed. The petitioner filed Ext.P6 review and the same was also dismissed as per Ext.P7 order. Hence this writ petition.

3. The impugned orders in this writ petition are Exts.P5 and P7. According to the petitioners, they received notice from the execution court and they appeared before the

execution court. They were not able to appear before the execution

21.08.2007, passed the following order: Respondent has not produced evidence. Heard. Allowed. Issues certified. Thereafter the petitioners filed Ext.P6 application to review the order. The same was dismissed as per Ext.P7 order on 30.07.2007. Challenging Exts.P5 and P7, this writ petition is filed.

4. Heard the counsel for the petitioners and the counsel for the respondents. The counsel for the petitioners

raised the same contentions in Ext.P6 application. The counsel submitted that if an opportunity is given to the petitioners, they will be able to convince the execution court that they are not liable to pay the amount. Several contentions are raised by

the petitioners. I don't want to make any observation about the same.

5. As I said earlier, it is an award passed in a claim

petition filed in 1985. The amount due from the judgment

debtors as on that date itself was a huge amount. Ext.P4 is the execution petition. Admittedly the further proceedings after Exts.P5 and P7 are stayed by this Court in this writ petition. According to me, to show the bonafides by the petitioners, they should deposit an amount of Rs.2 lakhs before the Tribunal. On such condition, Exts.P5 and P7 can be quashed. I make it clear that the deposit of the amount will be subject to the decision of the claim of the petitioners in the execution court. I set aside Exts.P5 and P7 on condition of the deposit of

Rs.2 lakhs. Moreover, in the light of the Apex Court judgment

in *Rahul S. Shah v. Jinendra Kumar Gandhi & Others* [2021 (4) KHC 148 (SC)], the execution court is bound to dispose the Execution Proceedings itself immediately. Therefore, this writ petition is disposed in the following manner:

1. Exts.P5 and P7 are set aside on condition that the petitioners will deposit an amount of Rs.2 lakhs before the Motor Accidents Claims Tribunal, Thrissur, within four weeks from today.
2. If the petitioners deposit the amount as directed above, the execution court will consider the case of the petitioners afresh and give them an opportunity to adduce evidence.
3. After giving an opportunity of hearing and allowing the petitioners to adduce evidence,

the execution court will decide the claim of the petitioners, as expeditiously as possible, at any rate, within six weeks from the date on which the amount is deposited as directed in clause (1).

4. If the amount is not deposited as directed in clause (1) above, the execution court will proceed from the stage of Exts.P5 and P7.
5. The execution court will dispose the execution proceedings within four months from the date of receipt of a copy of this judgment.
6. The registry will forward a copy of this

judgment to the execution court forthwith.

sd/- P.V.KUNHIKRISHNAN JV JUDGE APPENDIX OF WP(C) 5682/2008
PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE EXECUTION
PETITION DATED 22.11.1997 Exhibit P2 TRUE COPY OF THE AFFIDAVIT
DATED 6.3.99 Exhibit P3 TRUE COPY OF THE AGREEMENT DATED 1.3.1998
Exhibit P3(A) TRUE COPY OF THE INSPECTORS OBSERVATION SLIP DATED
28.6.01 Exhibit P3(B) TRUE COPY OF THE LETTER SUBMITTED BEFORE THE
REGIONAL PROVIDENT FUND COMMISSIONER, KALOOR DATED 16.8.01
Exhibit P4 TRUE COPY OF THE EP NO.240/04 DATED 27.9.2004 Exhibit P5
TRUE COPY OF THE ORDER DATED 21.8.2007 Exhibit P6 TRUE COPY OF
THE PETITION DATED 22.8.2006 Exhibit P7 TRUE COPY OF THE ORDER
DATED 30.07.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com