

IN THE COURT OF THE SUBORDINATE JUDGE, PERUMBAVOOR

Present:- Sri.Johnson M.I, Sub Judge

Monday, the 24th day of July, 2023 / 2nd Sravana 1945

E.A.No.149/2023 in E.P.No.16/2019 in O.S.No.43/2016

Petitioner /Judgment Debtor :-

Thomas K.Mathew, S/o Kottanathu Veetil Mathai,
aged 52 years, Mattappalli Purayidathil, Ezhipram Kara,
Ayikaranadu North Village, Ernakulam District.

By Adv.Sri.K.V.Gopakumar.

Respondent / Decree Holder :-

Johny Thomas, S/o Thomas, aged 53,
Ayikkarakkudy House, Vengola Kara,
Arakkappady Village, Ernakulam District.

By Adv.Sri.P.T.Geeverghese.

This petition is filed under Order XXI Rule 22 under Section 151 of the Code of Civil Procedure to hear the maintainability of the Execution Petition, in the light of Appellate Court Judgment in RFA No.287/2019 and is coming on for final hearing on 24.07.2023 in the presence of the above counsels and the court on the same day passed the following :-

ORDER

This is a petition filed by judgment debtor for dismissal of the execution petition on the ground that, execution petition is not maintainable.

2. Decree holder filed serious objection to this petition.

3. I heard the counsel for both sides and perused the case records.

4. Suit was for realisation of money. Suit was decreed on 31-01-2019 directing the judgment debtor to pay an amount of Rs.4194315/- with 12% interest over the principal sum of Rs.40 lakh from 7-9-2016 to 31-1-2019 and thereafter with 6% interest till its payment with cost from the defendant. Thereafter, decree holder filed E.P.16/2019 on 9-4-2019 for arrest and detention of judgment debtor with the allegation that, judgment debtor has sufficient means to pay the decree debt, but, he is willfully omitting to pay the same. In the same, judgment debtor filed objection pleading no means. Thereafter, PW1 and PW2 were examined from the side of decree holder and DW1 was examined from the side of judgment debtor. Ext.B1 was also marked. Thereafter, E.P was posted for hearing. In the meanwhile, judgment debtor filed RFA 287/2019 before Hon'ble High Court of Kerala against the judgment and decree in the suit. The Hon'ble High Court of Kerala dismissed the appeal on 30-3-2023. While RFA 287/2019 was pending before Hon'ble High Court of Kerala, there was a stay from Hon'ble High Court of Kerala in proceeding the E.P. After dismissal of RFA 287/2019, decree holder produced certified copy of

order on 23-6-2023. After the judgment in RFA 287/2019 and dismissal of appeal, stay was automatically vacated and hence, case was posted to 11-7-2023 for final hearing in the E.P. On 11-7-2023, case was posted to 24-7-2023 (today) for final hearing in the E.P. While so, judgment debtor filed this E.A alleging that, decree is not executable and execution petition is not maintainable.

5. In this E.A, it is alleged by the judgment debtor that, decree of lower court dated 31-1-2019 was merged in the judgment and decree of Hon'ble High Court of Kerala in RFA 287/2019 and hence, decree holder is not entitled to execute the decree in the suit dated 31-1-2019. With the said allegation, judgment debtor has further alleged that, E.P is not maintainable.

6. Copy of judgment in RFA 287/2019 is marked as Ext.A1 for the reference in this E.A. From Ext.A1, it can be seen that, Hon'ble High Court of Kerala dismissed the appeal on merit on 30-3-2023. From the same, it can be seen that, by dismissing the appeal, Honble High Court of Kerala has confirmed the judgment and decree of the lower court. In the said circumstances, decree of lower court is to be executed and hence, it can be seen that, abovesaid allegation of judgment debtor is not sustainable.

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It can be seen that, allegation in this petition is without any basis. In my considered opinion, the petition was filed by the judgment debtor only to drag the matter and to abuse the process of court. Hence, the petition is only to be dismissed with cost of decree holder.

In the result, the petition is dismissed with cost of Rs.5,000/-.

Dictated to the Confdl.Asst., transcribed and typed by her, corrected by me and pronounced in the Open court on this the 24th day of July, 2023.

Sd/-
JOHNSON M.I
SUB JUDGE

APPENDIX :- NIL

Sd/-
Sub Judge

Pkm.
Compd by.Laj

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ORDER

DATED : 24-07-2023

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