

IN THE COURT OF CIVIL JUDGE (SENIOR DIVISION), PERUMBAVOOR

Present : Smt.Annie Varghese, Civil Judge (Senior Division)

Saturday, the 27th day of September 2025/05th Aswina 1947

E.A.57/2025 in E.A.31/2025 in E.P.16/2019 in O.S.No.43/2016

Petitioner/Judgment Debtor :-

Thomas K.Mathew, S/o Kottanathu Veetil Mathai, aged 54 years,
Mattappalli Purayidathil, Ezhipram Kara, Ayikaranadu North Village,
Ernakulam District.

By Adv. K.V.Gopakumar

Respondent/Decree Holder :-

Johny Thomas, S/o Thomas, aged 55, Ayikkarakkudy House, Vengola
Kara, Arakkappady Village, Ernakulam District.

By Adv. P.T.Geeverghse

This application is filed under Section 151 read with Order XXVI Rule 10 and 10A of the Code of Civil Procedure 1908 to pass an order to remit back the commission report dated 18.06.2025 along with the valuation report dated 27.05.2025 submitted by the valuer, with a direction to file a consolidated report incorporating the valuation report. The petition is coming on for hearing on 27.09.2025 in the presence of the above counsel and the court on the same day passed the following :-

ORDER

Objection filed. Heard both sides. This petition is filed to remit commission report on the ground that the Advocate Commissioner had filed commission report along with the valuation report submitted by the valuator appointed as suggested by the decree holder, and stated in the report that the valuator appointed as suggested by the judgment debtor had not handed over the valuation report to the Advocate Commissioner; while the court vide order

in E.A.31/2025 dated 07.04.2025 had appointed an Advocate Commissioner and two valuers, one each from the side of the decree holder and judgment debtor and had directed to file a single report with addendum, in case of differences. The petitioner is seeking to remit the commission report on the ground that the valuation report filed separately by the valuator appointed on the side of the judgment debtor does not form part of the commission report and that there are substantial differences between the reports. The petitioner is seeking to remit the commission report so that the advocate commissioner can file a consolidated commission report taking into account both the valuation reports. The decree holder has filed objection stating that the petition is filed only to delay the execution petition.

It is seen that this court had issued summons to the valuator appointed on the side of the judgment debtor to produce the valuation report after the advocate commissioner filed commission report along with valuation report filed by the valuator appointed on the side of the decree holder. The valuator appeared on summons and submitted the valuation report and stated that he had not submitted the report to advocate commissioner as the batta was not paid to him by the judgment debtor. Batta was then paid to him in open court. These are recorded in the order sheet dated 21.07.2025. Learned counsel for the judgment debtor submitted that the valuator did not accept batta from the judgment debtor but claimed Rs.15,000/-. Learned counsel stated that he had informed the court regarding the same on 30.05.2025. However, no such submission is recorded in the order sheet. Learned counsel did not seek permission to deposit the batta in court in case the valuator was not accepting the same. Non payment of batta was brought to the attention of court only on 21.07.2025 when the valuator appeared in court on summons and filed the valuation report. Even while batta was paid in open court, the counsel did not make any submission that the valuator had not accepted the

court ordered batta but demanded an exorbitant amount. Such a claim is raised by the counsel for the first time today in court at the time of hearing. Such a contention was not raised in this petition also. Hence it is seen that the valuator appointed on the side of judgment debtor could not file the valuation report solely due to the reason that the judgment debtor failed to pay batta. The judgment debtor is now before the court seeking to take advantage of his own mistake. It is seen that along with the commission report the advocate commissioner had appended an e-mail of the valuator stating that batta was not paid by the judgment debtor. The judgment debtor did not raise any objection to the same. It is seen that the valuation report filed by the valuator appointed on the side of decree holder shows the value of the property as Rs.37 lakhs, while the other valuation report shows the value as Rs.37,25,000/-. There is no much difference in the value arrived at in both reports. The valuation report filed by the valuator appointed on the side of the judgment debtor is accepted as part of the commission report. A consolidated report could not be filed only due to the failure on the part of the judgment debtor to pay batta. Hence the fault on the part of the judgment debtor cannot be sought as a ground to remit the commission report. In any case considering that both valuation reports are showing almost the same value there is no ground to remit the commission report. Hence this petition is dismissed.

Pronounced in the Open court on this the 27th day of September, 2025.

Sd/-
Annie Varghese
Civil Judge (Senior Division)

Appendix : Nil

Sd/-
Civil Judge (Senior Division)

stn

Compd by. amb