

**IN THE COURT OF THE SUBORDINATE JUDGE, THIRUVALLA**

**Present: Smt. Roshni.H, Sub Judge**

**Thursday the 18<sup>th</sup> November 2021/ 27<sup>th</sup> Karthika 1943 SE**

**EP.No. 29/2017 in LAR.No. 34/2012**

**Between**

- 1 George @ Valal Koruthu George,  
Valal Puthenparambil House,  
Kuttappuzha P.O, Kuttappuzha Muri,  
Kuttappuzha Village, Thiruvalla Taluk.
- 2 Achamma Susan George,  
Valal Puthenparambil House,  
Kuttappuzha P.O, Kuttappuzha Muri,  
Kuttappuzha Village, Thiruvalla Taluk.  
(By Adv.Thomas Jacob)

Claimants  
Decree Holders

**And**

- 1 The State of Kerala  
represented by the District Collector,  
Pathanamthitta.
- 2 The Southern Railway Ernakulam  
Represented by  
Chief Engineer Construction.  
(By Adv.M.J Vijayan (AGP) for JD1)

Judgment Debtors  
Respondents

This Execution Petition having been finally heard on 03-11-2021 and the court on 18-11-2021 passed the following:

**ORDER**

This is an execution petition filed by the decree holder / claimants in LAR No.34/2012 to realize the decree amount. Subsequently they filed a balance statement claiming an additional amount of ₹.13,66,738/- as interest.

2. Petition averments in brief is as follows:- Petitioners / decree holders has filed the execution petition claiming an amount of ₹.85,48,944/- (Rupees eighty five lakhs forty eight thousand nine hundred and forty four) which is due from the judgment debtors. Subsequently they filed a statement of account claiming interest from 01.01.2012 to 07.12.2019. Because as on 07.12.2019 an amount of ₹.13,66,738/- (Rupees thirteen lakhs sixty six thousand seven hundred and thirty eight.) is also due to them in addition to the amount to which they have originally filed the execution petition. According to the petitioners, they filed this execution petition on 12.07.2017. Notice was issued to the judgment debtors and they entered appearance. He filed an EA No.23/2018 to attached the scheduled property and to realize the decree amount by sale of the property. Though the judgment debtors entered appearance on 04.8.2017, on 06.11.2019 Government pleader sought time to deposit the amount, and the case was adjourned to 07.12.2019. On the day, this court has ordered that from the records it is seen that an amount of ₹.71,06,443/- has been deposited on 20.01.2018 consequent to which these petitioners / decree holders has filed a balance statement. According

to the petitioners / decree holders they were not served with a notice regarding the deposit of this amount on 20.01.2018. They were unaware of the deposit. Hence they are entitled to get interest till 07.12.2019 ie., the date on which they got information about the deposit from this court. Accordingly they filed the present balance statement claiming an additional amount of ₹.13,66,738/- as balance due on 07.12.2019.

3. The judgment debtors / respondents though did not file written objection to the statement of account dated 07.09.2021, the learned government pleader vehemently objected to this statement of account claiming that as the amount is deposited on 20.01.2018 and notice was send to the petitioners / decree holders, there is no other liability on the judgment debtors. The petitioners are at liberty to withdraw the amount. For the deposit which was made in the year 2018, he received notice in EP only on 2019 and so he prayed for time. The petitioners cannot take the benefit of his oral submission made before the court on 06.11.2019. It was only for verification that he sought time and so the petitioners are not entitled to any further interest. Further, he pointed out that from the despatch register it is clear that notice was duly sent to the petitioners as well as to the court.

4. Heard both sides.

5. Point that arose for consideration is:-

- 1) *Whether the petitioners / decree holders are entitled to get an amount of ₹.13,66,738/- as on 07.12.2019 in addition to the decree amount?*
- 2) *Reliefs and costs?*

6. Point No.1:- The definite case of the petitioners / decree holders is that they filed the execution petition on 12.07.2017 to realize the decree amount of ₹.85,48,944/-. Though the judgment debtors entered appearance on 04.08.2017, the case was adjourned for various reasons and on 06.11.2019 the government pleader on behalf of judgment debtors sought time for deposit. On 07.12.2019 this court came to know that the amount was deposited on 20.01.2018. According to the learned counsel for the petitioners, then only they came to know about the deposit by the judgment debtors. Without knowing this fact they were proceeding with the execution petition. So they are entitled to interest till 07.12.2019, the date on which they came to know about the deposit. He drew the attention of the court to Ext.A1, the certified copy of the 'B' diary which shows that on 06.11.2019 government pleader sought time to deposit the amount and the fact of deposit has come to the notice of court as well as petitioners only on 07.12.2019. But the learned government pleader relied on to Exts.B1 and B2. He drew the attention of the court to Ext.B1, the true copy of the despatch register to substantiate his argument that notice was send to the government pleader, the

petitioners as well as Sheristadar of this court by the Tahsildar on 16.01.2018 showing that the amount was deposited. Ext.B2 is the copy of the notice issued to the first petitioner on 16.01.2018. So according to him, they are not entitled to get further interest as sufficient notice was given to them. The learned counsel for the petitioners drew the attention of the court to Order 21 Rule (1) Sub Clause (2) which says that registered notice with acknowledgment due shall be issued by the judgment debtors if they deposit the decree amount before court. They didn't receive such a notice and so they were not aware of the deposit. So according to him, the amount was not within the reach of the petitioners.

7. On hearing both sides and on perusing records it is seen that as rightly pointed out by the learned counsel for the petitioners / decree holders, even though this execution petition was filed on 12.07.2017, from Ext.A1 B diary it can be seen that till 06.11.2019, the case was adjourned for various reasons. On 06.11.2019, the government pleader sought time for depositing the amount. It is clear from the proceedings that the judgment debtors entered appearance and sought time for objection on 04.08.2017 itself. From 04.08.2017 till 06.11.2019 there was no submission from the side of the judgment debtors regarding the deposit. On 07.12.2019 this court came to notice that the amount of ₹.71,06,443/- was deposited on 20.01.2018. Order 21 Rule (1) says about the mode of payment of money under a decree. As per Order 21 Rule (1) (1) (a) deposit can be made to

the court by whose duty it is to execute the decree. Here, admittedly the deposit is made to the court. Further Order 21 Rule (1) sub rule (2) says as follows, *where any payment is made under clause (a) or clause (c) of sub rule (1), the judgment debtor shall give notice there of to the decree holder either through the court or directly to him by registered post, acknowledgment due.* This provision makes it crystal clear that if the amount due under a decree is deposited by the judgment debtor before the court, notice is to be send by registered post with acknowledgment due, to the decree holder. Here Ext.B1, the despatch register shows that notice was issued from the office of the Tahsildar to the government pleader, petitioners / decree holders and to this court on 16.01.2018 by fixing stamp of ₹.5/-. Ext.B2 is the copy of the notice issued to the first petitioner. But as rightly pointed out by the learned counsel for the petitioners the acknowledgment card is not produced by them. When Order 21 Rule (1) sub rule(2) says the particular mode by which the amount is to be deposited and intimation is to be given, then it has to be complied with in letter and spirit. Government authorities cannot dilute the rigour of the provision by sending a notice by ordinary post.

8. In Gafoor A.E and Others v. District Police Chief, Palakkad and others [2020(2) KHC 131], the Hon'ble High Court considered a similar issue regarding the issuance and service of notice. Though the Hon'ble High Court was

considering the matter which is coming under the Kerala Conservation of Paddy Land or Wet Land Act, 2008, the issue regarding notice was similar to the facts of this case. Hence the same principle can be adopted here also. The Hon'ble High court has passed the order after considering Section 27 of the General Clauses Act as well as the relevant provisions of the Kerala Conservation of the Paddy Land and Wet Land Act, 2008. It was held that, *mere entry in the despatch register itself will not constitute a proof. When Law mandates service of notice, the procedure that has to be followed is with reference to the statute itself and in the absence of procedure in such statute, it has to be in accordance with Section 27 of the General Clauses Act. If a prescribed procedure is not followed, there is no presumption for any official act. The presumption to the official act would arise only when the action itself was following the procedure.* Here, the learned government pleader has pointed out that the official acts are presumed to have been properly done. But this dictum answers the point ie., the benefit of the presumption is available only if the authorities were following the procedure as mentioned in the statute itself. Here Order 21 Rule (1) sub rule (2) says the mandate which has to be followed. When the decree amount is deposited before the court, registered notice with acknowledgment due has to be issued to the decree holder. There is no other substitute for this. Here from Exts.B1 and B2 it is clear that registered notice with acknowledgment due was not issued to these

petitioners. There is no other evidence on the part of the respondents / judgment debtors to show that notice was served on these petitioners / decree holders. Exts.B1 and B2, hence cannot be a substitute for the acknowledgment card which is the only proof to establish the fact that mandate under Order 21 Rule (1) Sub rule (2) was strictly complied with.

9. In Varkey Ouseph v. Narayanan Parameswara Panicker [1956 KHC 19], the Hon'ble High Court considered a situation regarding the interest on the deposit which was unaware to the decree holders and held that *reading the provision Order 21 Rule (1)(i)(a) together with Clause (2), it looks fairly clear that when a judgment debtor chooses to deposit the amount due as per a decree into the court of execution, the payment become effective only from the date of the notice. The reason for the provision as to notice is to enable decree holder to withdraw the money due to him, so that he may make use of it in the manner he deems proper.* Here the learned counsel for the petitioners / decree holders vehemently argued that even though the judgment debtor / respondents claims that the amount was deposited on 20.01.2018, it was not within the knowledge of the petitioners or within their reach. A deposit means the amount should be within the reach of the decree holders so as to realize it. In view of the dictum laid down by the Hon'ble High Court in the aforesaid decision and considering the intention of the legislature in Order 21 Rule (1) sub rule (2), I do agree with the argument of

the learned counsel for the petitioners that unless and until due intimation was given about the deposit to the decree holder, they are entitled to get interest. In a way, this provision is intended to save the government also from unnecessary claims. The government officials cannot escape from the mandatory requirement of issuing a registered notice with acknowledgment due simply by placing the true copy of a despatch register. As the legal mandate regarding registered notice was not complied with by the respondents / judgment debtors, the argument of the learned counsel for the petitioners / decree holders that they were not served with a notice even after filing the execution petition and they received the information about the deposit only on 07.12. 2019 from the court has to be believed. If that be so, they are entitled to get interest till 07.12.2019. In this situation, this court comes to a finding that the balance statement filed by the petitioners / decree holders on 07.09.2021 can be accepted. An amount of ₹.13,66,738/- (Rupees thirteen lakhs sixty six thousand seven hundred and thirty eight) is the balance amount due as on 07.12.2019 which is to be deposited by the judgment debtors before this court. Hence point No.1 is found in favour of the petitioners / decree holders.

10. Point No.2:- In view of my finding in point No.1 , the respondents / judgment debtors are directed to deposit the balance amount within thirty days failing which the petitioners / decree holders can realise the amount through due

process of law.

In the result, respondents / judgment debtors are directed to deposit the balance amount of ₹.13,66,738/- within thirty days failing which the petitioners / decree holders can realise the amount through due process of law.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open Court on this the 18<sup>th</sup> day of November, 2021).

Sd/-  
**ROSHNI.H**  
**SUB JUDGE.**

**APPENDIX :- NIL**

**Id/-**  
**SUB JUDGE**

Fair/Copy of Order in  
EP.No 29/2017 in LAR No. 34/2012  
Dated:18-11-2021