

IN THE COURT OF THE DISTRICT JUDGE OF THRISSUR

Present:

Sri. P.P. Saidalavi., District Judge.

Saturday, 22nd day of February, 2025/3rd Phalgunam, 1946.

I.A.01/2025 in C.A. 3/2025

Petitioners/ Appellants:-

1. Asharaf A. Bava, aged 58 years, S/o Ibrahim Bava, Akathoottu house, Nellimatam desom and P.O., Pareekanni Village, Kothamangalam Taluk, Pin-686 693.
2. David Raj C., aged 57 years, S/o Jacob Das, H.No.21, Skyline Heritage, Mundupalam desom, Kuriachira P.O., Thrissur Village and Taluk, Pin-680 006.

By Advs.P.B. Rajeev & P.R. Rajesh

Respondent:-

BRD Finance Limited, Reg. office at Bethany Complex, Thrissur Road, Kunnankulam desom and Village, Thalapilly Taluk, Thrissur -680 503 rep. by its Litigation Clerk, Mani S., aged 56 years, S/o Sankaran, Mulankunnathukavu house, Konchery Road, Killannur Village, Mulankunnathukavu P.O., Thrissur Taluk and District.

This petition is coming on this day for hearing, the court passed the following:-

ORDER

This is a petition under Order 41 Rule 5(1) of Civil Procedure Code r/w sec.13 of Commercial Courts Act with a prayer to stay the operation of the decree and judgment in C.S.28/2023 dated 30.10.2024 of Commercial Court,

Chavakkad. The suit was for realization of Rs.13,90,293/- from the defendants with interest and costs. The 1st defendant resisted the suit by filing written statement. After trial, on 30.10.2024 the learned Judge decreed the suit. Aggrieved by the decree and judgment, the defendant filed the present appeal. *Inter alia* it is contended that the judgment and decree of the trial court is against the facts and circumstances of the case, the trial court failed to appreciate the pleading and evidence in a correct perspective. Therefore for the various grounds urged in the memorandum of appeal and other grounds urged at the time of hearing the appellant/petitioner is on bonafide belief that there is high possibility to reverse the findings of the learned trial Judge. Along with the appeal the appellant filed the present petition to stay the operation of the impugned judgment and decree till the disposal of the appeal.

2. Heard counsel for the petitioner and perused the impugned judgment and the memorandum of appeal.

3. At this stage *prima facie* I am satisfied that there are good case to argue in appeal. That be so if the impugned decree is executed, that will detrimentally affect the interest of the appellant/petitioner. The very appeal

itself may become infructuous. Therefore for the time being the operation of the impugned judgment and decree is hereby stayed for a period of four months. In the midst of his submissions the learned counsel for the appellant/petitioner submitted that there is an attachment before judgment on the property of the defendant as security for the decree which may be passed against the appellant/petitioner. Therefore no further security under Order 41 Rule 5(3) is ordered.

Issue notice to the respondents for their appearance and counter statement. Call on 22-05-2025.

(Dictated to the Personal Assistant, transcribed by her, corrected by me and pronounced in open court on this the 22nd day of February, 2025).

sd/-

**P.P. SAIDALAVI.,
DISTRICT JUDGE.**

By Order,

Sheristadar

/true copy/