

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 12TH DAY OF AUGUST 2022 / 21ST SRAVANA, 1944

OP(C) NO. 1361 OF 2022

AGAINST THE ORDER IN I.A.377/2019 IN O.S NO.297/2016 OF MUNSIFF COURT, PARAVUR

DATED ON 12.04.2019

PETITIONER/PLAINTIFF:

SHYJU.B,
AGED 35 YEARS,
S/O BABU,
CHARUVILA PUTHEN VEEDU,
JAWAHAR JUNCTION,
PARIPPALLY VILLAGE,
PARIPPALLY P.O, KOLLAM TALUK,
KOLLAM., PIN - 691574

BY ADV M.R.SARIN

RESPONDENT/DEFENDANT:

SAJEEV,
AGED 55 YEARS,
S/O RAJAN,
THANAL (THUNDU VILA VEEDU) ,
KOVOOR DESAM, PALAYAMKUNNU P.O,
CHEMMARUTHI VILLAGE,
VARKALA TALUK, THIRUVANANTHAPURAM,
PIN - 695146

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 12.08.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 12th day of August, 2022

The original petition is filed to set aside the order in I.A.No.377/2019 in O.S.No.297/2016 (Ext.P4) of the Court of the Munsiff, South Paravur.

2. The petitioner's case is that, he is the plaintiff in the above suit filed against the respondent. During the pendency of the suit, the parties were referred for mediation. They settled the dispute and entered into Ext.P2, memorandum of agreement before the mediator, attached to the District Mediation Centre, Kollam. The petitioner filed I.A.No.377/2019, for refund of the court fee paid as provided under Section 69(A) of the Kerala Court Fees and Suit Valuation Act. But, the court below has dismissed the application holding that, as the suit is dismissed as not pressed, the petitioner is not entitled for refund of court fee. Ext.P4 is erroneous and wrong. Hence, the original

petition.

3. Heard; Sri.M.R.Sarin, the learned counsel appearing for the petitioner. In the light of the limited relief that I propose to pass, I dispense with notice to the respondent.

4. When this original petition came up for consideration on 29.07.2022, this Court had called for a report from the court below, to ascertain whether the parties were referred for mediation and whether Ext.P2 memorandum of agreement was filed in the suit.

5. The learned Munsiff, South Paravur, by communication dated 02.08.2022, has reported that the petitioner and the respondent were referred for mediation on 24.10.2017 and they reported that the dispute was settled between them on 26.10.2017. The mediation report was filed in the court on 20.03.2018, reporting that the dispute has been fully and finally settled and the petitioner has stated that he has no

objection in the order of attachment being lifted. However, before receiving the mediation report, the plaintiff had filed a memo stating that the suit may be dismissed as not pressed. Accordingly, the court below suo motu advanced the case and the suit was dismissed as 'not pressed', after lifting the order of attachment. It was in the above circumstances, that Ext.P4 order was passed.

6. The question is whether there is any error in Ext.P4 order.

7. It is undisputed, that the parties to the suit were referred to mediation and the dispute between the petitioner and the respondent was settled as per Ext.P2 memorandum of agreement executed between them as provided Under Section 89 of the Code of Civil Procedure (in short 'Code') read with Rules 24 and 25 of the Civil Procedure (Mediation Rules, 2005). It is also reported that Ext.P2 has been filed in the suit. When the court below had referred the parties to

mediation, the court below was obliged to await the mediation report before passing any further orders in the suit. It is also statutory that when a suit is settled under Section 89 of the Code, without adjudication, the plaintiff is entitled for refund of the entire court fee as provided in Section 69 (A) of the Kerala Court Fees and Suit Valuation Act, 1959.

8. In the above legal and factual background, I am of the view that Ext.P4 order passed by the court below is erroneous and wrong. The court below ought to have recorded Ext.P2 memorandum of agreement and disposed of the suit as per the terms and conditions in the mediation agreement, instead of dismissing the suit as not pressed. Nevertheless, as a decree has already been passed, the petitioner's proper remedy would be to seek for the review of the decree rather than assailing an ancillary order.

In the result, I dispose of the original petition in the following manner:-

(i) The petitioner would be at liberty to move the court below and seek for the review of the decree dismissing the suit as not pressed.

(ii) If the review petition is allowed and the decree is set aside, and the suit is reopened, the court below shall act upon Ext.P2 mediation agreement and dispose of the suit in accordance with Ext.P2 and order the refund of the entire court fee as provided under Section 69 (A) of the Kerala Court Fees and Suit Valuation Act, 1959, read with Section 89 of the Code.

Sd/-
C.S.DIAS
Judge

APPENDIX

PETITIONER'S EXHIBITS

- Exhibit1 THE TRUE COPY OF PLAINT IN O.S. NO 297/2016
BEFORE THE HON'BLE MUNSIFF COURT, PARAVUR
- Exhibit2 THE TRUE COPY OF MEMORANDUM OF AGREEMENT UNDER
SECTION 89 OF CPC WITH RULES 24 AND 25 OF CPC
(MEDIATION) RULES 2005 PASSED BY THE HON'BLE
MUNSIFF COURT PARAVUR DATED ON 26.12.2017.
- Exhibit3 THE TRUE COPY OF MEMO OF COURT FEE.
- Exhibit4 THE CERTIFIED COPY OF THE ORDER IN IA NO.
377/2019 IN O.S NO. 297/16 BEFORE THE HON'BLE
MUNSIFF COURT, PARAVUR.