

(2012) 11 KL CK 0200
In the High Court Of Kerala
Case No : OP (C) No. 3635 of 2012 (O)

E. Narayana Menon and Others

APPELLANT

Vs

Chalakudy .N.S.S. Educational Cultural and Charitable
Society and Prakash Kumar, Joint Secretary

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A

Citation : (2012) 11 KL CK 0200

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : S. Vinod Bhat and Sri. Legith T. Kottakkal, for the Appellant;

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—Exhibit P5, judgment to the extent it set aside the order on I.A. No. 4887 of 2008 (in O.S. No. 442 of 2008 of the

Sub Court, Irinjalakuda) and remitted that application to the Sub Court, Irinjalakuda for fresh decision is under challenge in this Original Petition.

Though the maintainability of this Original Petition itself is doubted since a proceeding under Rule 2A of Order XXXIX of the CPC (for short, &

quot; the Code"" is an independent proceeding not related to the suit and hence only a revision would lie, I do not propose to direct the petitioners

to file a revision in view of the decision I propose to take in this Original Petition.

2. Petitioners filed I.A. No. 2300 of 2008 in O.S. No. 442 of 2008 in the Sub Court, irinjalakuda for an order of temporary injunction. That

application was dismissed by the learned Sub Judge against which the petitioners filed C.M.A. No. 131 of 2008. The learned First Additional

District Judge, Thrissur allowed the appeal and granted an order of temporary

injunction.

3. Later, alleging that the order of injunction (granted by the learned Additional District Judge as per judgment in C.M.A. No. 131 of 2008) was

violated by the respondents, petitioners filed I.A. No. 4887 of 2008 under Rule 2A of Order XXXIX of the Code.

4. Learned Sub Judge framed an issue in the suit as regards the alleged violation of the order of temporary injunction, enquired into the alleged

violation along with other issues involved in the suit and entered a finding against the respondents. The respondents were found to have violated the

order of injunction (granted by the learned District Judge vide judgment in C.M.A. No. 131 of 2008). The respondents were directed to be

detained in the civil prison for willful disobedience of the order.

5. The respondents challenged the judgment and decree of the learned Sub Judge in appeal before the learned District Judge. In that appeal, they

also challenged correctness of the order on I.A. No. 4887 of 2008. The learned District Judge considered correctness of the order on I.A. No.

4887 of 2008 as point No. 2 in Ext. P5, judgment and concluded that the trial court was not correct in framing an issue as to the alleged violation

of the order of injunction and deciding that issue along with other issues involved in the suit. The learned District Judge was of the view that I.A.

No. 4887 of 2008 ought to have been decided separately. The learned District Judge remitted I.A. No. 4887 of 2008 to the learned Sub Judge

for fresh decision.

6. It was contended that even I.A. No. 4887 of 2008 was not maintainable in the trial court for the reason that the alleged violation was of the

order passed by the learned District Judge in C.M.A. No. 131 of 2008 and hence the application ought to have been filed before the Additional

District Judge. The learned District Judge in paragraph 5 of the judgment directed that question of maintainability of I.A. No. 4887 of 2008 in the

trial court could also be urged while considering I.A. No. 2300 of 2008.

7. Though learned counsel for the petitioner has contended that the view taken by the learned District Judge that I.A. No. 4887 of 2008 has to be

disposed of separately is not correct, I find it unable to accept that contention, also in view of the decision in Gyan Chand Jain and others Vs.

XIIIth Addl. District and Sessions Judge, Agra and others, followed by this Court

in Koshy P. Cherian v. Ramachandran (2012 [1] KLT SN 57

(Case No. 65). This Court took the view that since the nature of proceedings under Rule 2A of Order XXXIX of the Code and in the suit and the

manner of appreciation of evidence are different, a proceeding under Rule 2A of Order XXXIX had to be disposed of independently. Therefore

the learned District Judge is correct in setting aside the order on I.A. No. 4887 of 2008 and remitting that application to the trial court for fresh

decision.

8. So far as maintainability of I.A. No. 4887 of 2008 in the trial court is concerned, the learned District Judge has directed that the said question

also could be urged before the trial court while considering I.A. No. 4887 of 2008. Having heard the learned counsel, I do not find any legal

infirmity in the view taken by the learned District Judge as regards I.A. No. 4887 of 2008 in Ext. P5, judgment.

Original Petition is dismissed.