

(2010) 08 KL CK 0271

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26469 of 2010 (O)

K.V. Balakrishnan and K.S. Narayanan Thazhath

APPELLANT

Vs

Lourdh Church Kuri Office, Trustee, George Kolangara and
Trustee, Adv. Jerome A. Manjila

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Citation : (2010) 08 KL CK 0271

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : Rajit, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—Judgment debtors in E.P. No. 539 of 2008 in O.S. No. 1116 of 1994 of the court of learned Additional Sub Judge-II, Thrissur are the petitioners before me aggrieved by Ext.P2, order issuing warrant of arrest to them on a finding that in spite of having means they have neglected/refused to pay amount due under the decree. It is contended that finding is not correct. It is requested alternatively that petitioners may be permitted to pay the amount in instalments.

2. Execution petition was filed in the year 2008 for realisation of Rs. 52,170/- with future interest. Manager of respondent No. 1 was examined as PW1 and he proved Exts.A1 and A2. No contra evidence was produced by petitioner. Evidence of PW1 and Ext.A2 shows that petitioner No. 1 retired as a teacher, got Rs. 12,00,000/- as retirement benefits and is earning Rs. 10,000/- per month by way of pension. It is also proved by Ext.A1 that he has one acre of land comprised in resurvey No. 1352/02 of Thekkukara Village. So far as petitioner No. 2 is concerned, it has come in evidence that he is working as a teacher and according to PW1 earning Rs. 20,000/- per month. His salary is proved by Ext.A3, certificate. It is come in evidence that petitioner No. 2 owns 30 cents of land. Sufficient evidence has been let in to show that petitioners have means to

discharge the liability. Admittedly, they have not discharged the amount due under the decree. It follows that they have neglected/refused to pay the amount. Hence issue of warrant against petitioner is justified.

3. Learned Counsel requested that petitioners may be permitted to pay the amount in instalments. That however is a matter which petitioners have to urge in the executing court. To facilitate such a request and to give some time to the petitioner to discharge the liability, I am inclined to direct that warrant of arrest issued to the petitioners will stand in abeyance for a period of two months from this day.

Resultantly this writ petition is dismissed but, petitioners are granted two (2) months" time from this day to discharge liability under the decree subject to the condition that petitioners shall deposit in the executing court for payment to the respondent Rs. 20,000/- (Rupees Twenty Thousand Only) within one month from this day. In case the condition is not complied or, the liability is not discharged within the said period of two months it will be open to the respondent to proceed with execution pursuant to Ext.P2, order without any further enquiry as to means of petitioner. I make it clear that it will be open to the petitioners to approach executing court in the meantime and request for instalment facility. In case any such request is made executing court shall decide that question after hearing counsel for respondent also untrammelled by time limit specified herein to discharge the liability.