

(2011) 08 KL CK 0027

In the High Court Of Kerala

Case No : R.P. No. 576 of 2011 (K) in W.P.C. No. 18106 of 2011

Nittoor Sajeevan and Nittoor Ajayakumar

APPELLANT

Vs

Chalil Madathil Mahamood and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Citation : (2011) 08 KL CK 0027

Hon'ble Judges : Pius C. Kuriakose, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : Sunil Nair Palakkat, for the Appellant; No Appearance, for the Respondent

Judgement

Pius C. Kuriakose, J.—Review of our judgment dated 12/07/11 is sought for by Respondent Nos. 5 and 6. Sri. P. Sunil Nair, the learned Counsel for the review Petitioners submitted that at the time when this Writ Petition was instituted before this Court, civil suit and application for injunction were pending between the Petitioner and the party Respondents before a competent civil court. When there was civil litigation in respect of a subject matter before a competent civil court, the Writ Petitioner should have been directed to approach the civil court for relief. As that was not done, the writ Petitioner has been able to steal a march over the review Petitioners. Prejudice has been caused to the review Petitioners on account of the delivery of the timber logs to the Writ Petitioner on the strength of this Court's judgment.

2. Even though Sri. Sunil Nair, the learned Counsel for the review Petitioner made very fervent submissions before us, we are of the view that our judgment itself contains sufficient safeguards for protecting the review Petitioner's interest. We were informed by the learned Government Pleader on the basis of the instructions he received from the second Respondent/Sub Inspector that the 5th Respondent seems to have some claim over the timber logs in question. Hence, we had directed under our judgment that the second Respondent/Sub Inspector "will summon the 5th Respondent immediately and ascertain from him

as to what is the ground for his objections in the matter of timber logs being delivered back by the saw mill owner the third Respondent to the Petitioner". We had also directed that it should be enquired that whether there is any court order in favour of 5th respondent restraining delivery of the logs to the Petitioner. We directed the second Respondent to render protection for ensuring that the logs are returned by the third Respondent to the Writ Petitioner only in the absence of any court order in favour of the 5th Respondent. We are sure that if the second Respondent has rendered protection to the Writ Petitioner for taking delivery of the timber the same was done after informing the 5th Respondent of the directions in our judgment and only upon finding that the 5th Respondent was not able to produce any order in his favour restraining such delivery.

3. Sri. Sunil Nair submitted that the delivery if actually has taken place will cause prejudice to the interest of the review Petitioners in the ongoing civil litigations. We do not think so. We clarify that the delivery of the logs pursuant to our judgment is without prejudice to the claims of the review Petitioners in the civil suit. In other words if the result of the civil suit comes to be in favour of the review Petitioners, the Writ Petitioner will be bound to account for the full value of the timber logs in question. We also permit the review Petitioners to seek appropriate interim reliefs in respect of the timber logs or the proceeds of those logs from the civil court in the pending matter. We are sure that if motion is made to the learned Subordinate Judge seeking interim relief, the learned Subordinate Judge will consider the same on merits and pass appropriate orders early.