
(2013) 04 KL CK 0014
In the High Court Of Kerala
Case No : O.P. (C) No. 1574 of 2013

Peoples Bank

APPELLANT

Vs

Devadas

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Citation : (2013) 2 KHC 697 : (2013) 3 KLJ 163 : (2013) 3 KLT 9

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : T. Rajesh, for the Appellant;

Final Decision : Allowed

Judgement

Thomas P. Joseph, J.—In view of the manner in which I propose to dispose of this Original Petition and since the warrant of arrest was sought only against the 1st respondent who remained absent in the executing court, notice to the respondents is dispensed with. Petitioner obtained a decree for recovery of money, in O.S. No. 430 of 2004 of the Munsiff's Court, Chalakudy and the decree certificate was transferred to the Munsiff's Court, Irinjalakuda for execution where petitioner filed E.P. No. 967 of 2007. Though all the respondents are arrayed as judgment debtors in E.P. No. 967 of 2007, prayer for issue of warrant was only as against the 1st respondent. The executing court by Ext.P3 order dismissed E.P. No. 967 of 2007 for the reason that 1st respondent could not be arrested.

2. Learned counsel submits that 1st respondent evaded arrest and that there was no fault on the part of petitioner. Reading Ext.P3, order, I am unable to find what was the default if any, on the part of petitioner. Merely for the reason that the 1st respondent could not be arrested, the execution petition should not and could not have been dismissed. Hence, I am constrained to interfere with Ext.P3, order.

Resultantly this Original Petition is allowed as under:

1. Ext.P3, order dated 31.12.2012 in E.P. No. 967 of 2007 (in O.S. No. 430 of 2004) of the Principal Munsiff's Court, Irinjalakuda is set aside.
2. E.P. No. 967 of 2007 is remitted to the said court.
3. Petitioner shall take necessary steps to trace out the 1st respondent so that the warrant of arrest could be executed.
4. Petitioner shall appear in the executing court on 20.05.2013.