
(2010) 11 KL CK 0133
In the High Court Of Kerala
Case No : C.R.P. No. 585 of 2010

P.K. Rajesh and P.K. Mani @ Thumban	APPELLANT
Vs	
The Catholic Syrian Bank Ltd.	RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Citation : (2010) 11 KL CK 0133

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : T. Sethumadhavan, for the Appellant; No Appearance, for the Respondent

Judgement

Thomas P. Joseph, J.—This revision is in challenge of the order passed by the learned Munsiff-Magistrate, Pattambi on October 12, 2010 in E.P. No. 25 of 2010 in O.S. No. 142 of 2006. Respondent sought personal execution against petitioners for recovery of money due under the decree. Representative of respondent gave evidence as P.W.1 and proved Exts.A1 to A3. Exhibits A1 and A2 are the statements which petitioners had given to the respondent at the time of availing the loan. Exhibit A3 is the copy of written statement where petitioners agreed to pass a decree on consent. P.W.1 gave evidence that petitioner No. 2 has 5= cents of land, that petitioner No. 1 is conducting a Water Service Station and has 3 cents of land and a house. Petitioners gave evidence as R.Ws.1 and 2 and denied that they have means to pay decree debt. Executing court found that petitioners have sufficient means, refused or neglected to pay the amount and issued warrant of arrest. That order is under challenge in this petition. Learned Counsel for petitioners contends that there is no acceptable evidence to prove means of petitioners and that version of P.W.1 regarding means of petitioners has been controverted by the petitioners which, there is no reason to reject.

2. This Court in Kuppuswamy v. P.G. Menon 1992 2 KLT 203 held that though the initial burden is on the decree holder it is not as if decree holder is bound to bring in evidence of all details of source of income of judgment debtor and that if

some evidence indicting means of the judgment debtor is produced it is for the judgment debtor to contradict it.

3. Exhibits A1 and A2 are admittedly statements given by petitioners to the respondent at the time of availing loan where it is stated that they have sufficient means to repay the loan. There is no case or evidence that they ceased to have means after Exts.A1 and A2. True, respondent did not produce documentary evidence to show that petitioner No. 1 is conducting Water Service Station and has three cents of land as stated by P.W.1. But in considering the means one has also to refer to Ext.A1, statement given by petitioner No. 1. So far as Ext.A2, statement given by petitioner No. 2 is concerned P.W.1 stated that petitioner No. 2 has 5= cents of land. When examined as R.W.2, petitioner stated that he has only 1/5th undivided share in the 5= cents of land. But he did not produce any document to substantiate that. When questioned about that, it was stated that the document was gutted in fire. If that be so, he could have produced a copy of that document. That was not done. In the decision cited supra this Court held that if it is proved that judgment debtor owns some property it is for him to raise funds either by sale or mortgage or creating other encumbrance. Having regard to the facts and circumstances of the case I do not find reason to interfere with the impugned order. However considering the difficulties expressed by the petitioners to raise the amount in lump I am inclined to grant three months" time to the petitioners to discharge the liability.

Resultantly, this petition is dismissed. But petitioners are granted three months" time from 01.12.2010 to discharge the entire liability due under the decree and during the said period the warrant issued to the petitioners shall remain in abeyance but subject to the following conditions.

(i) Petitioners shall deposit in the executing court for payment to respondent not less than Rs. 5,000/- (Rupees Five thousand only) per month on or before 5th of each month beginning from 01.12.2010 provided that by the last installment the entire debt due under the decree is discharged (unless further time is granted by the executing court on request of petitioners and after hearing the respondent).

(ii) In case of default in payment of any installment or the entire decree debt is not paid within the period granted as stated above (unless further time is granted by the executing court), it will be open to the executing court to proceed against petitioners personally without further enquiry as to means of petitioners.