

(2010) 08 KL CK 0178

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24191 of 2010 (O)

Swaminathan and Jayakrishnan

APPELLANT

Vs

K. Premkumaran

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37, Order 21 Rule 37(2)

Citation : (2010) 08 KL CK 0178

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : I. Dinesh Menon, for the Appellant; No Appearance, for the Respondent

Judgement

Thomas P. Joseph, J.—Notice to respondent is dispensed with in view of the order I am proposing to pass in these Writ Petitions.

2. These Writ Petitions are in challenge of separate orders passed by the learned Munsiff, Palakkad in E.P. Nos. 227 of 2010, 224 of 2010 and 226 of 2010, respectively in O.S. Nos. 555 of 2008, 526 of 2008 and 524 of 2008. Learned Munsiff in the absence of petitioners and acting on the affidavit filed by respondent/decreed holder found that petitioners, inspite of having means refused/neglected to pay the amount due under the decrees. Learned Counsel for petitioners contend that finding is not correct and that petitioners did not get opportunity to contest the applications preferred by respondent for personal execution. It is contended by learned Counsel that assuming that petitioners did not respond to the notice issued under Order XXI Rule 37 of the CPC (for short, "the Code") warrant of arrest had to be issued under Sub-rule (2) of Rule 37 and that enquiry regarding means could be conducted only when petitioners appeared (pursuant to the notice) or when they were brought (as per warrant of arrest) before court.

3. Since petitioners remained absent in the executing court and the court has acted upon affidavit of the respondent to find in favour of means I do not

consider it necessary to go into the merit of the contentions advanced by the petitioners in these proceedings. I leave that contention open. At this stage, learned Counsel for petitioners submitted that they may be given opportunity to request the executing court to set aside the ex parte order against them and to seek review of the order issuing warrant of arrest. I make it clear that it is open to the petitioners to move appropriate applications as provided under law before the executing court. Having regard to the facts and circumstances of the case I am inclined to think that order issuing warrant of arrest shall remain in abeyance for some time so that in the meantime petitioners can pay the amount due under the decree or move appropriate application before the executing court.

Resultantly this Writ Petition is disposed of in the following lines:

- i. Petitioners are granted two months time from this day to pay the amount due under the decree. The warrant of arrest issued against petitioners shall stand in abeyance for the said period on condition that petitioners deposited in the executing court for payment to respondent Rs. 8,000/- (Rupees eight thousand only) in each case within two weeks from this day.
- ii. It is made clear that it will be open to the petitioners to move the executing court within the time specified under law to set aside the ex parte order against them and to seek review of the impugned order as provided under law. If any such applications are preferred executing court shall consider those applications and pass appropriate orders. While considering those applications executing court shall not be under the impression that the impugned orders have been confirmed by this judgment.