

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 23390 of 2007(H)

AGAINST THE ORDER IN EP.222/06 IN
OS.638/2004 of PRL.M.C., KOCHI
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PETITIONER:

BINEESH MOHANAN, S/O.MOHANAN,
KOOVAKKATTU (H), P.D.ROAD PALLURUTHY MURI,
PALLURUTHY VILLAGE, PALLURUTHY, KOCHI-5.

BY ADV. SRI.G.KRISHNAKUMAR
SRI.B.S.SURAJ KRISHNA

RESPONDENTS:

BINEESH P.,
S/O.PAVITHRAN, 'KARTHIKA' UZHUVA MURI,
PATTANAKKAD VILLAGE, CHERTHALA TALUK,
ALAPPUZHA DIST.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.KRISHNAN, J.

WP (C) No.23390 OF 2007 H

Dated this the 31st July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the Munsiff, Kochi in E.P.222/06 in O.S.638/05. The writ petitioner was ordered to be arrested and detained in civil prison for a period of 45 days on his failure to pay the decree amount. The court below considered the evidence of P.W.1 and held that the decree holder had succeeded in proving the means. It is submitted that the writ petitioner is still a partner in tours and travels and that he is deriving income, these are all matters which can be proved by production of documents as well. The mere ipse dixit of a witness shall not be sufficient. But in this case unfortunately the judgment debtor did not go to the box. The learned counsel, in fairness submits that an opportunity be given to him so that he can rebut the evidence that is already tendered. Therefore, the order under challenge is set aside. The matter is remitted to the executing court for consideration and both parties are directed to adduce evidence, both oral and documentary. Since the matter is disposed of at the admission stage itself the learned Munsiff is directed to intimate the

decree holder and then proceed in accordance with law. Writ petition is disposed of accordingly.

M. N. KRISHNAN
Judge

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