

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOMAS P.JOSEPH

WEDNESDAY, THE 30TH JUNE 2010 / 9TH ASHADHA 1932

WP(C).NO. 17847 OF 2010(O)

**AGAINST THE ORDER IN EP.4/2010 IN
OS.174/2009 OF ADDL.MUNSIFF COURT,NEDUMANGAD**
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PETITIONER(S):

**MURUKESAN, S/O.THANKAPPAN ACHARY
AGED 46, JAYAGOPAL MANDIRAM, MUKKOLAKKAL
KARUPPOORU VILLAGE, NEDUMANGAD.**

**BY ADV. SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

RESPONDENT(S):

**NATARAJAN, S/O.CHELLAPPAN
AGED 70, SITHA VILASAM, ANADMURI, ANAD VILLAGE,
NEDUMANGAD.**

**ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30/06/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT P1
IN O.S. NO.174 OF 2009.**

TRUE COPY OF THE COMPROMISE FILED BY THE PARTIES

**EXHIBIT P2
RESPONDENT.**

TRUE COPY OF E.P. NO.4 OF 2010 FILED BY THE

**EXHIBIT P3
OF 2010.**

TRUE COPY OF THE ORDER DATED 27.5.2010 IN E.P. NO.4

RESPONDENT'S EXHIBITS:

NIL

TRUE COPY

THOMAS P.JOSEPH, J.

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W.P(C) No.17847 of 2010

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Dated this the 30th day of June, 2010

J U D G M E N T

Petitioner-judgment debtor challenges Ext.P3, order of the learned Additional Munsiff, Nedumangad executing the decree in O.S. No.174 of 2009 and issuing warrant against him on finding that in spite of having means he has neglected or refused to pay the amount due under the decree. Learned counsel for petitioner contends that it is without sufficient materials on record that finding regarding means has been entered and at any rate petitioner may be given an opportunity to pay the amount in installments. Learned counsel for respondent contends that petitioner who is a practising lawyer has sufficient income as found by the court below and there is no reason to interfere with the said finding. It is also stated that in the compromise decree petitioner was given six months' time to pay off the decree debt but that has not been complied.

2. I have gone through Ext.P3, order. Respondent gave evidence as P.W.1 regarding means of petitioner but the latter did not enter the box. Though initial burden of proving means of

judgment debtor is on the decree holder it is not as if the decree holder is bound to give every details regarding source of income of judgment. If some evidence regarding means is adduced it is for the judgment debtor to controvert the same. Here that has not done. Taking into account the fact that petitioner is a practising lawyer having sufficient length of practice I do not find reason to interfere with the impugned order.

3. I have heard learned counsel for respondent in the matter of request of petitioner for payment of the amount in installments. Learned counsel for petitioner states that pursuant to the order of this Court on 09.06.2010 petitioner has deposited Rs.20,000/- (Rupees Twenty thousand only) in the executing court. Having regard to the facts and circumstances of the case I permit petitioner to pay the balance amount due under the decree in six equal monthly installments beginning from 20.07.2010.

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

- (i) Petitioner is permitted to deposit the balance amount due under the decree in the executing court in six equal monthly installments beginning from 20.07.2010.

(ii) Amount shall be deposited on or before 20th of every month and in case 20th of the month happens to be a holiday the deposit shall be made on the next working day.

(iii) In case balance amount due under the decree is not paid within the said period of six months or there is default in deposit of any two installments it will be open to the respondent to proceed with execution pursuant to Ext.P3, order without any further enquiry regarding means of petitioner.

(iv) The amount in deposit and to be deposited by the petitioner in the executing court can be withdrawn by the respondent.

THOMAS P. JOSEPH, JUDGE.