



2024:KER:86991

FA.O.No.70/2024

-1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

FAO NO. 70 OF 2024

AGAINST THE ORDER DATED 31.01.2024 IN I.A.NO.1 OF 2022 IN
OS NO.55 OF 2022 OF SUB COURT, KARUNAGAPPALLY

APPELLANTS/ 2ND RESPONDENT/6TH DEFENDANT:

ALOYSIUS ALEXANDER,
AGED 41 YEARS,
S/O. ALEXANDER FERNANDEZ, KUNNUMPARAMBIL HOUSE,
KULANGARABHAGOM, CHAVARA, KARUNAGAPPALLY TALUK,
KOLLAM DISTRICT, PIN - 691583

BY ADVS.N.M.MADHU
C.S.RAJANI

RESPONDENTS/ PETITIONER/RESPONDENTS 1 & 3/PLAINTIFF/DEFENDANTS 5
& 13:

- 1 S. JAYAKUMAR @PANAMBIL S JAYAKUMAR,
AGED 46 YEARS, ADVOCATE,
S/O. SREEDHARAN FROM ARUPARA VAYAILLIL VEEDU,
NENMENI, MUNTROTHURUTHU, KOLLAM DISTRICT 691 502,
NOW RESIDING AT POOVANDISSERITHARA VEEDU, PANANGATTU
JUNCTION, MANAPPALLY SOUTH, S.R.P.M.P.O., PAVUMBA VILLAGE,
KARUNAGAPPALLY TALUK, KOLLAM DISTRICT,
PIN - 690574
- 2 G. GOPAKUMAR,
AGED 43 YEARS,
S/O. GOPALAKRISHNA PILLAI, INDEEVARAM, AMMAN NAGAR,
PATTATHANAM, KOLLAM DISTRICT, PIN - 691021
- *3 DR. SUJITH (DELETED)
AGED 37 YEARS,
S/O.VIDHYADHARAN, THEKKILAZHIKATHU VEEDU,
PATTATHANAM, KOLLAM DISTRICT, PIN - 691021

*3RD RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE APPELLANT AS PER THE ORDER DATED 31.07.2024 IN
I.A.NO.2/2024.



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BY ADV RAJAN T R FOR R1

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 21.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T

The order dated 31.01.2024 of the Sub Court, Karunagappally, in I.A.No.1/2023 in O.S.No.55/2022 making the conditional order of attachment absolute over the property scheduled as item No.2 in the said proceedings, is under challenge in this appeal.

2. The appellant is the sixth defendant in the said suit, instituted by the first respondent/plaintiff, seeking damages for the alleged custodial torture meted out to him at the instance of the Police Officers of Karunagappally Police Station. The appellant was said to be the Sub Inspector of Police, Karunagappally, at the time when the first respondent allegedly suffered custodial torture. As per the order dated 15.07.2023, the learned Sub Judge directed the appellant herein to furnish security for the suit amount of Rs.25,00,000/- or to show cause why he shall not furnish security for the said amount. In the meanwhile, the landed property of the appellant, which was scheduled as item No.2 of that petition, was conditionally attached. The aforesaid conditional attachment was made absolute on 31.01.2024, after hearing both sides. Aggrieved by the aforesaid order, the appellant is here before this Court.



3. Heard the learned counsel for the appellant and the learned counsel for the respondents.

4. In the impugned order, the learned Sub Judge had observed that a prima facie case has been made out against the appellant herein and other Police Officers in connection with the alleged custodial torture meted out to the first respondent, and that there is the likelihood of the first respondent succeeding in the suit. It is further observed in the impugned order that the first respondent had affirmed that the appellant is taking hasty steps to alienate the petition schedule item No.2 property which might hamper the scope of execution of the decree that may be passed in favour of the first respondent.

5. The learned counsel for the appellant submitted that, due to the aforesaid attachment order over the petition schedule item No.2 property in I.A.No.1/2022 in O.S.No.55/2022 of the court below, the bank from where the appellant had obtained loan by offering the said property as security, is planning to recall the said loan and to initiate proceedings against the appellant under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement



of Security Interest Act, 2002. Thus, it is stated that the impugned order passed by the learned Sub Judge would cause irreparable hardships and sufferings to the appellant. It is also pointed out that if the bank proceeds against the attached property, it would ultimately affect not only the interests of the appellant but also the prospects of the first respondent in realising damages which he expects through the decree that may be passed in the suit.

6. Admittedly, the attached property was offered as security for the loan availed from the bank long before the institution of the suit. Therefore, the subsequent attachment over the said property cannot affect the right of the bank to proceed against the said property, in case the appellant commits default in the repayment of the loan. Thus, it has to be stated that there is absolutely no basis for the apprehension of the secured creditor that the attachment ordered by the learned Sub Judge over the property offered as security would cause any legal impediment in proceeding against the said property for the realisation of the loan amount, if it fell due on arrears.

7. Needless to say that the impugned order passed by the learned Sub Judge is not liable to be interfered with, on the ground



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that the said order would affect the continuance of the subsisting loan availed by the appellant by offering that property as security before the bank.

In the result, the appeal is hereby dismissed. However, it is made clear that the impugned order of attachment over the property scheduled as item No.2 in I.A.No.1/2022 in O.S.No.55/2022 of the Sub Court, Karunagappally, would no way affect the right and privilege of the bank concerned where the said property is offered as security for the loan availed, in proceeding against the said property, in the event of any default on the part of the appellant in making prompt repayment of the said loan.

(sd/-)

G.GIRISH, JUDGE

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APPENDIX OF FAO 70/2024

PETITIONER ANNEXURES

- Annexure A1** ATTESTED COPY OF THE TITLE DEED NO.845/2015
DATED 26.03.2015 OF S.R.O. CHAVARA
- Annexure A2** TRUE COPY OF THE RELEVANT PAGE OF THE
STATEMENT DATED 30.09.2024 IN RESPECT OF
ACCOUNT NO.35253336975 FOR HOME LOAN FOR A
SUM OF RS.6,80,000/-
- Annexure A3** TRUE COPY OF THE RELEVANT PAGE OF THE
STATEMENT DATED 30.09.2024 IN RESPECT OF
ACCOUNT NO.37470199651 FOR HOME LOAN FOR A
SUM OF RS.10,00,000/-