

Kerala High Court

Dasappan vs K.K.Surendran & Anr on 31 October, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 32107 of 2008(V)

1. DASAPPAN

... Petitioner

Vs

1. K.K.SURENDRAN & ANR.

... Respondent

For Petitioner :SRI.C.A.CHACKO

For Respondent : No Appearance

The Hon'ble MR. Justice THOMAS P.JOSEPH

Dated :31/10/2008

O R D E R

THOMAS P. JOSEPH, J.

W.P.(C) No.32107 of 2008 V

Dated this the 31st day of October, 2008.

JUDGMENT

Heard counsel for petitioner.

2. Petitioner filed E.A.No.162 of 2007 in E.P.No.17 of 2007 in O.S.No.43 of 2002 of Munsiff's Court, Changanassery. Execution Application was filed under Order XXI Rule 97 of the Code of Civil Procedure. Learned Munsiff adjudicated the claim of the petitioner and dismissed it. Challenging that order, petitioner filed A.S.No.273 of 2008 in the District Court, Kottayam with Ext.P5, application (I.A.No.1675 of 2008) to condone the delay of 26 days in filing that appeal. Case of the petitioner is that now the property is going to be delivered over. Petitioner therefore, prays the execution proceedings be kept in abeyance till the disposal of A.S.No.273 of 2008.

3. If petitioner has filed appeal as above stated against the impugned order, he has to approach that court and seek appropriate relief preventing delivery of the property. Request to keep the execution proceedings in abeyance till the disposal of the appeal cannot be entertained in this proceeding. However, considering the fact that the delay condonation application filed along with A.S.No.273 of 2008 is posted on 26.11.2008 and since the petitioner could request for stay only after condonation of delay, I am inclined to direct that execution proceedings for delivery of property in E.P.No.17 of 2007 will stand in WP(C) No.32107/2008 abeyance for a period of 15 (fifteen) days from today. In the meantime, it will be open to the petitioner to approach the District Court, Kottayam and seek appropriate reliefs in the appeal he claims to have preferred in that court.

With the above direction, this Writ Petition is closed.

THOMAS P.JOSEPH, JUDGE.

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