

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 20TH DAY OF SEPTEMBER 2012/29TH BHADRA 1934

OP(C).No. 3997 of 2011 (O)

EP 113/2008 IN OS.108/2007 of SUB COURT, PATHANAMTHITTA

PETITIONER(S):

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C.K.MOHINI, S/O. KITTAN,  
AGED 41 YEARS, HINDUSTAN PETROLEUM OUTLET  
LICENCE NO. KL/2210 OMALLOOR.P.O, PATHANAMTHITTA  
(FROM PUTHUPURYIDATHIL HOUSE, MUKKOTTUTHARA.P.O  
KOTTAYAM DISTRICT.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S):

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VARGHESE M MATHEW  
MANNIL VEEDU, PULLAD, KOIPURAM  
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.S.KRISHNAMOORTHY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-09-2012, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

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**APPENDIX**

**PETITIONER(S) EXHIBITS**

EXHIBIT-P1- TRUE COPY OF THE ORDER DATED 16/07/2010 IN  
I.A NO. 522/2010 IN O.S NO. 108/2007

EXHIBIT-P1(A)-TRUE COPY OF THE ORDER DATED 16/07/2010 IN  
I.A. NO. 521/2010 IN O.S NO. 108/2007

EXHIBIT-P2- TRUE COPY OF THE E.A. NO. 185/2010 IN  
E.P NO. 113/2008 IN O.S NO. 108/2007

EXHIBIT-P3- TRUE COPY OF THE ORDER DATED 17/06/2011 IN  
E.A NO. 185/2010 IN E.P NO. 113/2008 IN  
O.S NO. 108/2007

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE.

**V. CHITAMBARESH, J**

**OP(C) NO. 3997 OF 2011**

Dated this the 20<sup>th</sup> day of September, 2012

**JUDGMENT**

Section 60 (1) of the Code of Civil Procedure empowers all property belonging to the judgment debtor to be attached over which or the profits of which he has a disposing power. It is beyond doubt that profits are derived by virtue of the licence granted to the petitioner to run a petroleum outlet over which he has a disposing power. The licence so issued does not also fall within the excluded category under the proviso to Section 60 (1) of the Code of Civil Procedure.

2. The respondent/decreed holder contends that more than ₹6,50,000/- is due from the petitioner/judgment debtor. The petitioner on the other hand points out that steps have been initiated to set aside the ex-parte decree with a delay of 697 days. The order of the court below attaching the licence issued to the petitioner to realise the fruits under the decree for money cannot be faulted with.

3. Reliance placed on the Indian Easements Act or the Kerala Petroleum dealers licencing order to decipher 'licence'

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is out of place. The respondent points out that the petitioner has no other property which could be proceeded against. It is also asserted that the petitioner makes huge profits out of the licence issued to deal in petroleum products. I am not inclined to interfere with the order of attachment under the circumstances.

The Original Petition fails and is dismissed. This judgment will not disable the petitioner to move for appropriate reliefs in the Civil Miscellaneous Appeal pending against the order refusing to set aside the ex-parte decree.

**V. CHITAMBARESH  
JUDGE**

ncd