

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

CRP.No. 127 of 2015

E.P.NO.50/2012 IN A.R.C.NO.143/2003 OF MUNSIFF'S COURT, THIRUVALLA.

REVISION PETITIONER/COUNTER PETITIONER/JUDGEMENT DEBTOR:

**K.JOY, AGED 62 YEARS,
S/O.KUNJUKUNU,
KALAYILPADINJARETHIL HOUSE,
PULLAD P.O., KOIPRAM VILLAGE,
THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.K.N.RADHAKRISHNAN(THIRUVALLA)

RESPONDENT/PETITIONER/DECREEE HOLDER:

**THIRUVALLA CO-OPERATIVE HOUSE
CONSTRUCTION SOCIETY NO.A 302,
REPRESENTED BY ITS SECRETARY,
P.S.SOMARAJAN, PIN - 689 101.**

BY ADV. SRI.T.P.PRADEEP

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 09-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

[CR]

B.KEMAL PASHA, J.

.....
C.R.P. No.127 of 2015

.....
Dated this the 9th day of June, 2015

ORDER

In execution of an award passed by the Arbitrator, which was sought to be executed under Section 76(C) of the Co-operative Societies Act, 1969, the sale of the plaint schedule property was conducted on 29.06.2007. The Co-operative Society is the bidder in auction and the sale was confirmed as per Rule 83(3) of the Co-operative Societies Rules. Consequently, as per Rule 83(5) a sale certificate was also issued. An application was filed for delivery on

04.04.2012. Even though it was objected to by the petitioner on the ground that the application is barred by limitation, the court below has overruled the objections and allowed the execution petition by directing the Amin to carry out delivery, through order dated 07.03.2015. The said order is under challenge.

2. Heard learned counsel for the revision petitioner and the learned for the respondent.

3. According to the learned counsel for the revision petitioner, based on the decision in ***Parappanangadi Co-operative Service Bank Ltd. v. Sainaba***[2013(2) KLT 266], the period of limitation for filing an application for delivery is governed by Article 134 of the Limitation Act, as the matter comes within the purview of Order XXI Rule 95 of the Code of Civil Procedure, 1908. On that ground it is argued that the application for delivery is hopelessly barred by limitation.

4. *Per contra*, the learned counsel for the respondent has pointed out that the sale in this case was

not conducted through court, whereas the sale was conducted under Section 76(C) of the Co-operative Societies Act, 1969 and therefore, the provision governing the period of limitation in this case is Article 136 of the Limitation Act and not Article 134 of the Limitation Act. It is also argued that in cases where the sale itself is being conducted by courts, the Article that would be applied is Article 134 of the Limitation Act. When the sale is conducted under Section 76(C) of the Co-operative Societies Act, the provision governing the limitation for filing the application for delivery is one under Article 136 of the Limitation Act.

5. The learned counsel for the respondent is relying on the decision in ***Varghese v. Muthukulam Service Co-operative Society***[1980 KLT 400] and ***Selma Beevi v. Karunakaran Pillai***[1999 (3) KLT 350(DB)]. In both the decisions noted supra, it was held that the proper Article to be applied in a case like the present one is Article 136 of the Limitation Act and not Article 134 of the Limitation Act.

Therefore, the decision rendered by the learned Single Judge in ***Parappanangadi Co-operative Service Bank's*** case noted *supra* can be distinguished on the basis of the decisions in ***1980 KLT 400*** and ***1999 (3) KLT 350(DB)***.

6. On hearing either sides, and on a perusal of the records it has come out that the impugned order does not suffer from any illegality, irregularity or impropriety and therefore the same is not liable to be interfered with.

7. The learned counsel for the petitioner has pointed out that in case the delivery is effected, the petitioner and his family would be thrown to the street without any place of abode. Considering the facts and circumstances of the case, and the submissions made by the learned counsel for the petitioner, this Court is of the view that an opportunity can be granted to the petitioner to pay off the decree debt in 12 equal monthly instalments, with a default clause. The first instalment shall commence on 30.06.2015. In the event of default of any of the instalments, the execution

proceedings will continue.

In the result, this Civil Revision Petition is disposed of
as above.

ul/-

Sd/- B.KEMAL PASHA, JUDGE

[True copy]

P.S. to Judge