

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

FAO.No. 344 of 2013 ()

AGAINST THE ORDER IN E.A.557/2013 IN E.P.228/2007 IN OS 437/2006 of
I ADDL.SUB COURT, KOZHIKODE DATED 17-08-2013

APPELLANT/PETITIONER/2ND JUDGMENT DEBTOR:

K.BASHEER
PROPRIETOR, M/S KOVAI METALS MURIYANAL, P.O.
KUNNAMANGALAM, KOZHIKODE.

BY ADV. SRI.O.D.SIVADAS

RESPONDENTS/RESPONDENTS/DECREE HOLDER & AUCTION PURCHASER:

1. PUNJAB NATIONAL BANK
REPRESENTED BY SUDHA MOHANDAS, D/O K.N.MENON
SENIOR MANAGER, ASSET RECOVERY CELL, BANK ROAD
KOZHIKODE.

2. NAZAR
S/O IMBICHIKOYA, PANAMBRA VEEDU, VALLIKUNNU P.O.
KADALUNDI NAGARAM, MALAPPURAM DISTRICT.

R1 BY ADV. SRI.P.V.JAYACHANDRAN, SC, PUNJAB NATIONAL BANK
R2 BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS ANNEXURES:

ANNEXURE A1 : COPY OF THE EXTRACT OF 'B' DIARY

ANNEXURE A2 : COPY OF THE TYPED VERSION OF THE ENTIRE
PROCEEDINGS OF THE EXECUTION COURT IN the ABOVE E.P.

RESPONDENTS' EXHIBITS:NIL

True Copy

P A to Judge

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.344 of 2013

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Dated this the 29th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order by which the court below dismissed the application under Order XXI Rule 90 of the C.P.C. The judgment debtor is the appellant.

2. We have heard the learned counsel for the judgment debtor, decree holder/bank and auction purchaser.

3. The situation obtained as of now in this case is that certain intervening orders by this Court after the disposal of the application under Order XXI Rule 90 of the C.P.C will lead to anomalous situation, if we do not interfere with the order impugned in this appeal. During the pendency of the execution proceedings, the judgment debtor filed O.P(C).No.3361 of 2012 invoking Article 227 of the Constitution of India. We see that the said original petition was ordered on 11.10.2012 in the following manner:

“The petitioner is the loanee and the respondent has obtained a decree against the guarantor as well. The property of the guarantor by name Sri.Ismail is proclaimed for sale on 19-10-2012. The petitioner seeks a breathing time to pay off the decree debt in easy installments to

avert the sale.

2. It is upto the petitioner to file an application under Order XXI Rule 83 of the Code of Civil Procedure for postponement of the sale. The court below shall on receipt of such application shall adjourn the sale subject to the following conditions :

i) The petitioner shall deposit/pay a sum of Rs.75,000/-(Rupees seventy five thousand only) towards the decree debt on or before 18-10-2012.

ii) The sale of the property in E.P No.228/2007 in O.S No.437/2006 on the file of the Court of the Subordinate Judge of Kozhikode would stand adjourned on such deposit.

iii) The court below shall consider the grant of easy installments to the petitioner after hearing the respondent/ decree holder bank also .

iv) The amounts already paid by the petitioner shall be given credit towards the decree debt.

The Original Petition is disposed of. ”

4. Executing court noted that the amount ordered by this Court through the aforesaid judgment was deposited only on the day succeeding the date fixed for remitting such amount. Ultimately, it was held that no grounds are made out for interference under Order XXI Rule 90 of the CPC.

5. In O.P(C).No.3361 of 2012, the judgment debtor filed interlocutory applications for enlargement of time and condonation of delay in depositing the amount of Rs.75,000/- and also for impleading the auction purchaser in that original petition. The auction purchaser was impleaded. He filed counter affidavit. Learned single Judge allowed I.A.No.13480 of 2013 by passing the following order:

“I am satisfied about the explanation offered by the petitioner for condonation of delay in making the deposit of Rs.75,000/- (Rupees seventy five thousand only). The time fixed for deposit of the sum as directed in the judgment dated 11.10.2012 is extended by one day. The correctness or otherwise of the order refusing to set aside the execution sale is however left open to be decided in F.A.O.No.344/13 pending.

The I.A. is disposed of.”

6. The aforementioned order on I.A.No.13480 of 2013 was passed after giving an opportunity of hearing to the auction purchaser as well. We see that the effect of that order, non-payment of Rs.75,000/- on or before the date fixed in the judgment dated 11.10.2012 no more survives. If that be so, the further directions in that judgment will also revive, that is to say, the sale has to be further adjourned and the executing court will have to grant 'easy'

installments to the judgment debtor after hearing the decree holder/bank. In that regard as well, we do not find our way to decide on the correctness or otherwise of the finding as to whether grounds have been established under Order XXI Rule 90 of the CPC. The proceedings revert back to the position that would have been available as on 19.10.2012 as a result of effect of the judgment dated 11.10.2012 in O.P(C).No.3361 of 2012 and I.A.No.13480 of 2013 filed in that original petition in the interlocutory order dated 20.01.2014.

In the result, this appeal is allowed vacating the impugned order and remitting the application under Order XXI Rule 90 of the CPC to the court below also enabling that Court to give effect to the directions contained in the judgment dated 11.10.2012 in O.P(C).No.3361 of 2012 in the light of the extension of time and condonation of delay ordered through I.A.No.13480 of 2013. Parties are directed to mark appearance before the court below on 17.09.2015.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

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