

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

OP(C).No. 1344 of 2014 (O)

EA.156/13 IN EP.30/08 IN OS 94/2002 OF SUB COURT, KOTTARAKKARA.
.....

ORIGINAL PETITIONER/ IST RESPONDENT/ DECREE HOLDER:

**SIVARAMAN,
VALLIVILKATHU VADAKKATHIL VEEDU,
PADINJATTINKARA MURI,
KOTTARAKKARA VILLAGE.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN**

**RESPONDENT(S)/PETITIONER & 2ND RESPONDENT/
PETITIONER & JUDGEMENT DEBTOR:**

- 1. ANILKUMAR, SECRETARY,
EZHUKONE SERVICE CO-OPERATIVE BANK LTD.NO.2935,
EZHUKONE - 691505.**
- 2. PURUSHOTHAMAN, GOVINDAVILASOM VEEDU,
IRUMPANANGADU MURI, EZHUKONE VILLAGE - 691505.**

**R1 BY ADV. SRI.P.SHANES METHAR
R2 BY ADVS. SRI.C.HARIKUMAR
SMT.C.B.ANUROOPA**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-06-2015
ALONG WITH OPC. 1345/2014 & OPC.1346/2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 1344 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 : A TRUE COPY OF EA NO.156/13 IN EP NO.30/08 IN O.S NO 94/2002 ON THE FILE OF THE SUB COURT, KOTTARAKKARA.

EXHIBIT P2 : A TRUE COPY OF E.A NO.244/2013 IN EP.NO. 30/08 IN O.S NO.94/2002 ON THE FILE OF THE SUB COURT, KOTTARAKKARA.

EXHIBIT P3 : A TRUE COPY OF THE GEHAN EXECUTED BY THE 2ND RESPONDENT AND OTHERS INFAVOUR OF THE BANK PRODUCED BEFORE THE EXECUTION COURT AS EXT A1.

EXHIBIT P4 : A TRUE COPY OF THE AWARD DATED 14-02-2011 IN FAVOUR OF THE 1ST RESPONDENT, PRODUCED BEFORE THE EXECUTION COURT AS EXTS A2 & A3.

EXHIBIT P5 : A TRUE COPY OF THE COMMON ORDER DATED 01-03-2014 IN EA NO.156/13 AND 244/2013.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B. KEMAL PASHA, J.

.....
O.P.(C) Nos.1344, 1345 & 1346 of 2014
.....

Dated this the 26th day of June, 2015

J U D G M E N T

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The Ezhukone Service Co-operative Bank Limited No.2935 has got the first charge over the properties sought to be sold in execution of the decree in E.P.30/2008. The petitioner herein, who is the decree holder, has filed EP.30/2008 for the execution of the decree obtained by him in O.S.No.94/2002. The EP was filed by seeking the mode of execution by way of attachment, arrest, etc. The property mortgaged to the aforesaid Co-operative Bank was sought to be sold in execution of the decree. The EP amount comes around ₹1,33,000/-. When the execution proceedings were in progress, the Secretary of the aforesaid Co-operative Bank has stepped in and filed EA.156/2013 in the EP filed by the present petitioner, seeking enforcement of the award in favour of the

Co-operative Bank, praying that an amount of ₹8 lakhs with interest and cost due to the Bank from the judgment debtor may be permitted to be recovered from the sale of the property in question in the said EP. Apart from filing that EA, the Co-operative Bank has not chosen to get the award executed.

2. The court below considered EA.156/2013, the request of the present petitioner and the prayer of the petitioner in EP.30/2008 and EA.244/2013 filed by the present petitioner in EP.30/2008 together and passed a common order by upholding the request of the Co-operative Bank in EA.156/2013. It was found that the Co-operative Bank has got first charge over the property. After entering a finding to that effect, the court below has chosen to reject the prayer of rateable distribution made by the petitioner herein in EA.244/2013. Over and above it, it seems that the court below has dismissed EP.30/2008 filed by the petitioner. In OP(C) No.1344/2014, the petitioner challenges

the order in EA.156/2013. In OP(C) No.1345/2014, the petitioner challenges the dismissal of EP.30/2008. In OP(C) No.1346/2014, the petitioner challenges the order in EA.244/2013 in EP.30/2008.

3. Heard learned counsel for the petitioner and learned counsel for the judgment debtor.

4. It seems that as far as OP(C) No.1344/2014 is concerned, the challenge is with regard to the order passed by the court below relating to EA.156/2013. In fact, the court below has found that the Co-operative Bank has got first charge over the property in question and the court below has simply upheld the request forwarded by the Co-operative Bank in Ext.P1. It has to be noted that the Co-operative Bank has not preferred execution proceedings, whereas they have sought for the recovery of the amount based on the sale to be conducted in EP.30/2008. The procedure adopted by the Co-operative bank is patently illegal and irregular. The Co-operative Bank could not have

sought for a recovery of the amount through the EA in the EP filed by the petitioner herein. Therefore, at the most, the common order passed by the court below in respect of EA.156/2013 can only be considered as an order declaring that the Co-operative Bank has got first charge over the property. OP(C) No.1344/2014 can be disposed of to that effect.

5. Regarding OP(C) No.1345/2014, it seems that the impugned order passed by the court below is patently illegal and the same is liable to be set aside. Alternate reliefs have been claimed in the EP. Without adverting to those aspects, it seems that the court below has simply thrown out the decree. Ext.P3 order is liable to be set aside. The court below shall proceed with the execution of the decree through other modes or through the mode contemplated under the proviso (b) to Section 73(1) of the Code of Civil Procedure, 1908, for which the petitioner can file a separate EA by making the Co-operative Bank as well

as the judgment debtor as parties. In such case, the court below shall deal with the said EA in accordance with law.

6. With regard to OP(C) No.1346/2014, it seems that through EA.244/2013, the petitioner had sought for rateable distribution. Such rateable distribution cannot be granted in this case. At the most, what can be claimed is a relief under proviso (b) to Section 73(1) of the Code of Civil Procedure, 1908. When separate EA for the said purpose has to be filed, Ext.P3 in OP(C) No.1346/2014 does not call for any interference at all.

In the result, OP(C) No.1344/2014 is disposed of with the aforesaid observations, OP(C) No.1345/2014 stands allowed as observed above and OP(C) No.1346/2014 stands dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/26/06

// True Copy //

PA to Judge