

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

OP (DRT).No. 24 of 2015 (O)

**AGAINST THE ORDER/JUDGMENT IN RA 162/2011 of DEBT RECOVERY APPELLATE
TRIBUNAL, CHENNAI**

PETITIONER(S):

**N.K.KHALID AGED 47 YEARS
S/O.MR.KUNHIPARI, NO.18/547, NELLIKKOTTE HOUSE
ZEHNE ROAD, CALICUT - 2.**

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT(S):

- 1. T.P.BAVA @ SAIDALIKUTTY (DECEASED)
T.P.HOUSE, KALPAKAMCHERY, MALAPPURAM
KERALA STATE.**
- 2. STATE BANK OF INDIA,
REPRESENTED BY ITS BRANCH MANAGER, STATUE BRANCH
THIRUVANANTHAPURAM, KERALA STATE 695 001.**
- 3. THEYYAMPATTIL FATHIMA, W/O.KOYAKUTTY HAJI,
RESIDING AT T.P.HOUSE, KALPAKAMCHERY, MALAPPURAM
KERALA STATE 676 551.**
- 4. MARIYAMU, W/O.T.P. BAWA,
RESIDING AT T.P.HOUSE, KALPAKAMCHERY, MALAPPURAM
KERALA STATE 676 551.**
- 5. ANWAR ALI,
S/O.T.P. BAWA, RESIDING AT T.P.HOUSE, KALPAKAMCHERY
MALAPPURAM, KERALA STATE 676 551.**
- 6. MANAVAR ALI,
S/O.T.P. BAWA, RESIDING AT T.P.HOUSE, KALPAKAMCHERY
MALAPPURAM, KERALA STATE 676 551.**
- 7. MANSOOR,
S/O.T.P. BAWA, RESIDING AT T.P.HOUSE, KALPAKAMCHERY
MALAPPURAM, KERALA STATE 676 551.**

(....2)

OP (DRT).No. 24 of 2015 (O)

**8. DR.FATHIMA,
D/O.T.P. BAVA, RESIDING AT T.P.HOUSE, KALPAKAMCHERY
MALAPPURAM, KERALA STATE 676 551.**

**9. FASEELA,
D/O.T.P. BAVA, RESIDING AT T.P.HOUSE, KALPAKAMCHERY
MALAPPURAM
KERALA STATE 676 551.**

**RESPONDENTS 3 TO 9 ARE THE LEGAL HEIRS OF THE DECEASED 1ST
RESPONDENT**

**R2 BY SRI.R.S.KALKURA, SC, SBI
R4,R7,R8 BY ADV. SRI.N.SASI**

**THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (DRT).No. 24 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE ORDER DATED 4/10/2011 PASSED BY THE DEBTS
RECOVERY TRIBUNAL, ERNAKULAM.**
- P2: TRUE COPY OF THE ORDER DATED 31/7/2013 PASSED BY THE DRAT,
CHENNAI IN R.A. 162/2011.**
- P3: TRUE COPY OF THE JUDGMENT DATED 21/8/2014 PASSED BY THIS HON'BLE
COURT IN OP(DRT) NO.3500/2013.**
- P4: TRUE COPY OF THE PETITION FOR WITHDRAWAL FILED BY THE PETITIONER
IN R.A.162/2011 ON THE FILE OF THE DRAT, CHENNAI**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

STK

K. VINOD CHANDRAN, J.

O.P.(DRT) No.24 of 2015

Dated this the 2nd day of March, 2015

JUDGMENT

The brief facts to be noticed, to decide the above writ petition, is that the petitioner was the auction purchaser in the sale conducted by the Recovery Officer attached to the Debt Recovery Tribunal, Ernakulam. The first respondent shown herein, who is now deceased, was the judgment debtor. The respondents 3 to 9 are the legal heirs of the first respondent. The second respondent was the bank which had initiated proceedings before the DRT for recovery of a debt due to it.

2. On the appeal filed by the judgment debtor against an order of the Recovery Officer refusing to set aside the sale, Ext.P1 order was passed by the Debt Recovery Tribunal. The DRT having set aside the sale issued the following directions:

“In the light of the aforesaid decision/disposal of the Appeal, the sale consideration paid by the successful bidder/auction purchaser shall be refunded to them together with the interest and stamp charges already

deposited by the appellant. And the sale certificate issued should be surrendered before the learned Recovery Officer, by the purchaser, before claiming the refund as above, for necessary cancellation.”

2. The petitioner filed an appeal to the DRAT in which Ext.P2 order was passed, against which the petitioner approached this Court with a writ petition which was disposed of by Ext.P3. Ext.P3 set aside Ext.P2 order of the DRAT and remanded the matter to the DRAT. The appeal is now pending before the DRAT. But however, there is no Presiding Officer in the Appellate Tribunal. Subsequent to the remand made in Ext.P3, the first respondent passed away and there is a settlement arrived at, between the parties. Upon which, the petitioner has moved an application before the DRAT, Chennai, evidenced by Ext.P4. The said application is for withdrawal of the appeal on the basis of the settlement and for implementing the decision in paragraph 23 of the DRT extracted herein above.

3. In the circumstances of there being no Presiding Officer in the DRAT, the petitioner's prejudice, is in so far as his withdrawal application cannot be considered, nor is the disbursal effected as directed in Ext.P1. Only for reason of

substantial funds of the petitioner, being held up with the respondent bank, the petitioner approached this Court. This Court finds that this is an appropriate case in which extraordinary jurisdiction can be exercised especially since the matter has been settled out of court.

3. I have heard the learned counsel for the petitioner, the learned standing counsel for the second respondent and learned counsel appearing for respondents 3 to 9. Recording the consent of all parties, it is directed that the appeal before the Debt Recovery Appellate Tribunal, Chennai filed as R.A. No.162/2011 would stand withdrawn. The directions in paragraph 23 of Ext.P1 would be satisfied by the respondent bank, at any rate, within one month from today; on the petitioner complying with his part of the obligations therein.

Writ petition is disposed of. Parties to suffer the respective costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

//true copy//

P.A. To Judge