

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

OP (DRT).No. 44 of 2015 (O)

S.A.No.193/2012 DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONERS :-

1. JOSH Y, S/O. JOSEPH,
PUTHENPURACKAL HOUSE @ EROORICKAL,
KADANADU P.O., KOTTAYAM DISTRICT.
2. RENIL, S/O. FRANCIS,
PARACKAL @ EDAMULAYIL,
PIZHAKU P.O.,
KOTTAYAM DISTRICT.
3. SUNNY ANDREWS, S/O. ANDREWS,
MADHURAMCHERI HOUSE, KADANADU P.O.,
KOTTAYAM.

BY ADV. SMT.A.SREEKALA

RESPONDENTS :-

1. FEDERAL BANK,
STRESSED ASSET MANAGEMENT CELL,
THEKKUMKAL BUILDING
T.B.ROAD, KOTTAYAM, PIN - 686 001.
2. THE AUTHORIZED OFFICER,
FEDERAL BANK, STRESSED ASSET MANAGEMENT CELL,
THEKKUMKAL BUILDING, T.B.ROAD, KOTTAYAM, PIN - 686 001.
3. P.M.JAYACHANDRAN,
PUTHENPURACKAL HOUSE, ANTHINADU P.O.,
KOTTAYAM - 686 009.
4. THE DEBT RECOVERY TRIBUNAL,
ERNAKULAM - 682 017.

**R2 BY ADVS. SRI.A.ANTONY
SMT.LEELAMMA ANTONY**

**THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION
ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rkj

OP (DRT).No.44 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :-

**EXHIBIT P1 :- TRUE COPY OF S.A.NO.193/2012 FILED BEFORE THE 4TH
RESPONDENT.**

**EXHIBIT P2 :- TRUE COPY OF THE NOTICE DTD.02.12.2014 ISSUED BY THE
COMMISSIONER.**

RESPONDENT(S)' EXHIBITS :- NIL

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//TRUE COPY//

P.A. TO JUDGE

A.MUHAMED MUSTAQUE, J

O.P.(DRT)No.44 of 2015

Dated this the 17th day of June, 2015

JUDGMENT

The petitioners appears to be a purchaser from the borrower of the lending institution. The third respondent is the borrower. The petitioners impugns SARFAESI proceedings before this Court. The petitioners approached DRT by filing S.A. No.193/2012. The petitioners it seems have paid certain amount based on the direction of the DRT. However, they have not fully honoured the directions. Threatened with the dispossession, petitioners have approached this Court. The petitioners submits that they are prepared to discharge the entire liability owed by the borrower. The petitioners also undertake to withdraw S.A. No.193/2012 before the DRT.

2. The learned counsel for the bank opposes the prayer sought by the petitioners and submits that the petitioners have no locus standi to file the petition.

3. When a person making a conscious payment on behalf of the third person, that person cannot claim that it is payment under mistake. Therefore, taking note of the facts that the petitioners have already paid certain amount based on the direction of the DRT, I am of the view that the petitioners may be permitted to discharge the entire liability of the borrower on following terms and conditions;

i) The petitioners shall not claim any refund from the bank for any payment effected to the bank on behalf of borrower.

ii) The petitioners shall withdraw S.A.No.193/2012 within two weeks from today and necessary memo shall be filed before the DRT.

iii) The petitioners shall remit Rs.50,000/- on or before 29.06.2015. Thereafter, pay the entire balance in six installments starting from 20.07.2015.

iv) If the petitioners commits default in making anyone of the installments, the bank is at liberty to proceed against him.

Therefore, this petition is disposed of.

Sd/-

**A.MUHAMED MUSTAQUE
JUDGE**

rkj

//TRUE COPY//

P.A. TO JUDGE