

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

OP (DRT).No. 97 of 2015 (O)

**AGAINST THE ORDER/JUDGMENT IN OA 73/2013 of DEBT RECOVERY TRIBUNAL,
ERNAKULAM DATED**

PETITIONER(S):

**HILARY FELSON,
S/O.FRANCIS, NANTHENCODE, KOWDIAR P.O.,
TRIVANDRUM - 695 003.**

BY ADV. SRI.V.A.VINOD

RESPONDENT(S):

- 1. STATE BANK OF TRAVANCORE,
KAZHAKOOTTAM BRANCH, KAZHAKOOTTAM,
TRIVANDRUM - 695 582.**
- 2. ANIL AYYAPPANKUTTY NAIR,
S/O.AYYAPPANKUTTY NAIR, DEVI MANDIRAM, MINI ESTATE,
BHOOTHATHANKETTU P.O.,
KOTHAMANGALAM, ERNAKULAM - 686 691.**

**ABROAD ADDRESS
P.O.BOX NO.66482,
BAYAN 43755, KUWAIT.**

- 3. THE DEBTS RECOVERY TRIBUNAL,
ERNAKULAM, REPRESENTED BY ITS REGISTRAR - 682 016.**

**R1 BY ADVS. SRI.SATHISH NINAN
SRI.JAWAHAR JOSE, SC**

**THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION
ON 18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

msv/

OP (DRT).No. 97 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE EX-PARTE ORDER DATED IN 30.10.13 IN OA 73/13.

EXHIBIT P2. COPY OF THE ORDER DATED 13.10.14 IN IA 534 AND 572 OF 2014.

**EXHIBIT P3. COPY OF THE NOTICE DATED 23.6.15 FOR SETTING SALE
PROCLAMATION.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

MsV/

A. MUHAMED MUSTAQUE, J.

O.P. (DRT). No. 97 of 2015

Dated this the 18th day of August, 2015

J U D G M E N T

The petitioner is a builder. He undertook construction of an apartment by name A1 Residency. The 2nd respondent entered into an agreement with the petitioner for purchase of one of the unit. There was a tripartite agreement between the petitioner, 1st respondent Bank and 2nd respondent, whereby the Bank advanced loan amount to the 2nd respondent towards sale consideration.

2. The 2nd respondent failed to remit regular EMI. The Bank approached the DRT by filing Original Application. In that proceedings, the petitioner was also made a party. The petitioner was set ex-parte. Thereafter, the petitioner filed an application to set aside the ex-parte and undertook that he will discharge the entire liability in 3 instalments owed by the 2nd respondent. He could not remit the amount. It is submitted by the learned counsel that, the petitioner undertook before the DRT for the reason that, the DRT was not inclined to set aside the ex-parte order and he made a commitment in a peculiar circumstances of the case.

3. The petitioner's present prayer before this Court is that, he may be permitted to discharge the entire liability by way of instalments.

4. The learned counsel for the Bank submits that, the petitioner having agreed to discharge the liability in 3 instalments, he cannot seek relief before this Court for discharging the liability otherwise than in the manner he has undertaken before the DRT.

5. The petitioner submits that he has invested certain amounts in this apartment for completing the construction and he will lose the entire amount if the Bank sells the property to the 3rd party. It is further submitted that, on account of steps now taken by the Bank, he is unable to sell other apartments in the larger unit.

6. Considering the facts and circumstances following directions are issued:

(i) The petitioner shall remit ₹7.5 lakhs within one month from today.

(ii) Thereafter, the petitioner shall discharge the entire balance amount in nine equal monthly instalments from the succeeding month onwards.

(iii) Coercive steps against the petitioner shall be deferred in tune with the above directions.

(v) If the petitioner commits default in paying any one of the instalments, the Bank is free to proceed against the petitioner.

This writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

Pn