

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

OP (DRT).NO. 103 OF 2015 (O)

AGAINST THE ORDER/JUDGMENT IN TA 401/1998 OF DEBT RECOVERY TRIBUNAL,
ERNAKULAM

PETITIONER(S) :

1. THAMAR ALIAS AGED 62 YEARS
W/O.LATE ALIAS PAUL, PYNADATH AYYAMPILLI HOUSE
PULIYANAM P.O, ANGAMALI, ERNAKULAM DISTRICT
2. PRAVEEN PYNADATH,
S/O. LATE ALIAS PAUL, PYNADATH AYYAMPILLI HOUSE
PULIYANAM P.O, ANGAMALI, ERNAKULAM DISTRICT
3. PRASANTH PYNADATH,
S/O. LATE ALIAS PAUL, PYNADATH AYYAMPILLI HOUSE
PULIYANAM P.O, ANGAMALI, ERNAKULAM DISTRICT

BY ADV. SRI.SUNIL V.MOHAMMED

RESPONDENT(S) :

1. THE STATE BANK OF TRAVANCORE
ANGAMALI BRANCH, ANGAMALI, ERNAKULAM 683572
REP. BY ITS BRANCH MANAGER
2. THE RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL
KERALA STATE HOUSING BOARD BUILDING
PANAMPALLY NAGAR
ERNAKULAM 682 036 REP. BY THE REGISTRAR

R1 BY ADV. SRI.SATHISH NINAN
BY SRI.SANTHOSH MATHEW

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION
ON 02-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (DRT).NO. 103 OF 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE PETITION FOR IMPLEADMENT IN DRC 650/SBT IN
T.A NO 401/1998 FILED BY THE 1ST RESPONDENT

EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 20-02-1987 IN OS NO 94/1985
OF THE SUB COURT,PARAVUR

EXHIBIT P3 TRUE COPY OF THE DECREE DATED 20-02-1987 IN OS NO 94/1985 OF
THE SUB COURT,PARAVUR

EXHIBIT P4 TRUE COPY OF THE RECOVERY CERTIFICATE DATED 01-01-2002
ISSUED BY THE DRT

EXHIBIT P5 TRUE COPY OF THE CLAIM PETITION FILED BY MR. BENNY ANTONY
AND HIS WIFE BEFORE THE 2ND RESPONDENT

EXHIBIT P6 TRUE COP[Y OF THE IA NO 1257/2015 IN OS NO 94/1985 FILED BY
THE PETITIONERS

EXHIBIT P7 TRUE COPY OF THE IA NO 1258/2015 IN OS NO 94/1985 FILED BY
THE PETITIONERS

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....

O.P.(DRT).No.103 of 2015

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Dated this the 2nd day of September, 2015

JUDGMENT

The petitioners in the writ petition are the legal heirs of the 1st defendant in O.S.No.94 of 1985 before Sub Court, N.Paravur. In the said suit, a judgment and decree came to be passed on 11.04.1985 in favour of the 1st respondent herein. In Ext.P2 judgment, the 1st respondent herein was allowed to recover from the 1st defendant in the suit and his assets a sum of Rs.7,59,441.94 with interest at 14% per annum from the date of suit till realization and costs. In the said judgment, it is also made clear that, out of the aforesaid amount of Rs. 7,59,441.94, the 1st respondent herein, who was the plaintiff in the suit, could realize an amount of Rs.2,96,219.44 together with 14% interest from the date of suit till realization with proportionate costs from the 2nd defendant and his assets, and a sum of Rs.3,82,472.50 with interest at 14% per annum from the date of suit till realization and proportionate costs from the 3rd defendant and his assets. It is the case of the petitioners herein that, while giving effect to the said judgment and decree of the Sub Court, and drawing up a recovery certificate, the Debt Recovery Tribunal, Ernakulam failed to realize that the amounts of Rs.2,96,219.44 and Rs.3,82,472.50 that were

permitted to be realized by the respondent bank from the 2nd and 3rd defendants in the suit, were to be out of the amount of Rs.7,59,441.94 that the bank was entitled to recover from the 1st defendant in the suit. The mistake on the part of the Debt Recovery Tribunal resulted in an exorbitant amount being directed to be recovered from the petitioners herein pursuant to Ext.P2 judgment in the suit. It is under these circumstances that, the petitioners have approached this Court through the present OP(DRT) seeking a direction to the 2nd respondent recovery officer of the Debt Recovery Tribunal to keep in abeyance DRC No.650/SBT in TA No.401/1998 so as to enable the petitioners to correct the decree and also to file a petition to set aside Ext.P4 recovery certificate.

2. I have heard the learned counsel for the petitioners and the learned Standing counsel for the respondent bank.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the grievance of the petitioners in the present OP(DRT) is essentially with regard to the drawing up of the recovery certificate on an erroneous basis as already discussed above. I am therefore of the view that, the

interests of justice would be served by directing the Debt Recovery Tribunal, Ernakulam to correct Ext.P4 recovery certificate, so as to make it in conformity with the directions in Ext.P2 judgment, and issue a fresh recovery certificate to the respondent bank within a stipulated time frame. To enable the Debt Recovery Tribunal to do this, I quash Ext.P4 certificate and direct the Debt Recovery Tribunal to issue a fresh recovery certificate to the respondent bank after ensuring compliance with the directions in Ext.P2 judgment of the Sub Court, N.Paravur. The Debt Recovery Tribunal shall do the same within a period of one month from the date of receipt of a copy of this judgment after hearing the petitioners as well as the respondent bank. The petitioners shall produce a copy of this OP(DRT), together with a copy of this judgment before the DRT, Ernakulam for further action.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

