IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

R.F.A.No. 23 of 2011

AGAINST THE ORDER/JUDGMENT IN OS 182/2007 of SUB COURT, HOSDRUG DATED 30-10-2010

APPELLANT/PLAINTIFF:

V.GOPALAKRISHNAN, S/O.VASU NELLIYADUKKAM
KINANOOR AMSOM AND DESOM, P.O.KOLLAMPARA
KASARAGOD DISTRICT.

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENTS/DEFENDANTS:
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1. VISALAKSHI, D/O. KESAVAN,
   H.S.A., MALOTH KASBA GOVERNMENT HIGH SCHOOL
   VALLIKADAVU, P.O.MALOM 671 533.

2. KASARAGOD DISTRICT CO-OPERATIVE BANK,
   REPRESENTED BY ITS GENERAL MANAGER, KASARAGOD 671 001.

3. THE SALE OFFICER, KASARAGOD DISTRICT
   CO-OPERATIVE BANK, KASARAGOD 671 001.

R,R2 BY ADV. SRI.M.SASINDRAN,SC,KASARGOD DIST. CO. BAN
R,R3 BY ADV. GOVERNMENT PLEADER
R2 BY ADV. SRI.JAWAHAR JOSE, SC, KASARAGOD DIST. CO.OP BANK LTD.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

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R.F.A.No.23 of 2011

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Dated this the 5th day of October, 2015

JUDGMENT

Antony Dominic, J.

The plaintiff in O.S.182/07 on the file of the Sub Court, Hosdurg is the appellant. He filed the suit, seeking recovery of Rs.15,000/- from the first respondent, his divorced wife. He also sought an order of injunction restraining respondents 2 and 3 from proceeding against one acre of property in R.S.225/1A of Kinanoor village of Hosdurg Taluk. By the decree and judgment impugned in this appeal, though a decree as sought against the first respondent was passed, the prayer for injunction against respondents 2 and 3 was declined. It is aggrieved by this judgment and decree, this appeal is filed.

2. We heard the counsel for the appellant and the learned counsel appearing for respondents 2 and 3.

3. Briefly stated, the facts of the case are that in March 2000, the first respondent availed of a loan of Rs.1,00,000/- from second respondent. The appellant, being the then husband of the first respondent, stood surety to the loan in question and mortgaged one acre

of land in R.S.225/1A of Kinanoor village in favour of the bank. Subsequently, first respondent committed default and to cut a long story short, the bank filed A.R.C. 13/02 which resulted in an award directing the first respondent to pay the amount due to the bank and also creating a charge on the mortgaged property. In the Execution Petition filed, the appellant sought to be exonerated himself and on the rejection of such an application, Writ Petition 17697/05 was filed before this Court. In that writ petition, judgment was rendered by this Court granting an instalment facility to the appellant. After suffering such a judgment, the appellant filed O.S.182/07 in which the impugned judgment and decree was passed.

4. Admittedly, Section 100 of the Kerala Co-operative Societies Act provides that in respect of disputes between the bank and its members, the jurisdiction of the Civil and Revenue Courts stand excluded. Consequently, the grievance if any the appellant had could have been adjudicated only in a proceedings under Section 69 of the said Act. Therefore, the view taken in the judgment under appeal that

the relief sought against the bank could not have been granted by the Civil Court, is absolutely unimpeachable. We cannot, therefore, interfere with the judgment and decree in this appeal.

5. Be that as it may, even now on behalf of the bank, it is fairly submitted that if the appellant clears the liability that is due, the bank is willing to forego its claim over the mortgaged property which was purchased by it in the sale that was conducted on 8.12.2005 pursuant to the award in A.R.C.13/02.

6. In such circumstances, we direct that the stay of confirmation as ordered by this Court in this appeal will remain in force for a further period of five months from today. In the meanwhile, it would be open to the appellant to discharge the liability due to the bank either by himself or by his nominee, in which event the bank will release or recover the property to the appellant or his nominee, as the case may be. Needless to say that in case the appellant does not take advantage of the above within five months as

allowed by us, the third respondent shall confirm the sale in favour of the bank.

Subject to the above, the appeal is dismissed.

Sd/- **ANTONY DOMINIC, JUDGE**

Sd/- **P.V.ASHA, JUDGE**

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Paragraph 6 of the judgment dated 05.10.2015 in R.F.A23/2011 is substituted as follows:

"It would be open to the appellant to discharge the liability due to the bank, either by himself or by his nominee, within five months from today. If the liability is discharged as above, the bank will release or re-convey the property to the appellant or his nominee, as the case may be. Needless to say that in case the appellant does not take advantage of the above, the third respondent will be free to confirm the sale in favour of the bank, if not already done."

Vide order dated 20.10.2015 in R.F.A.23/2011.

Sd/-
Registrar (Judicial)

Time for payment specified in the order dated 20/10/2015 in R.F.A.23/2011 (substituting paragraph 6 of the judgment dated 05/10/2015 in R.F.A.23/2011) is extended by two months from 08/03/2016 vide order dated 08/03/2016 in R.F.A23/2011.

Sd/-
Registrar (Judicial)