

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

RP.No. 25 of 2015 ()

(AGAINST THE ORDER IN CRP.NO. 155/2014 DATED 13/11/2014)

PETITIONER:

VAZHAYIL PEEDIKAYIL JAYARAJAN,
S/O.KUMARAN,AGED 34 YEARS, TRADER,
RESIDING AT KANISANKANDIYIL ERAMALA AMSOM DESOM,
ERAMALA POST, VATAKARA TALUK, KOZHIKODE DISTRICT,
KERALA STATE.

BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENT(S)/RESPONDENTS:

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1. P.K.MOIDU, S/O.MAMMU, AGED 49 YEARS, TRADER
MANAGING PARTNER (1ST DEFENDANT FIRM)
'UMINHIYIL MANTHODY',ORKKATTERI POST,
VATAKARA VIA, ERAMALA AMSOM,ORKKATTERI DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT,
KERALA STATE. PIN-673 101
 2. CANARA BANK WITH HEAD OFFICE AT BANGALORE
BY PRINCIPAL OFFICER/SR.MANAGER
CANARA BANK VATAKARA MAIN BRANCH, AMBIKA BUILDING,
CHURCH ROAD,VATAKARA AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT, KERALA STATE. PIN-673 101

R1 BY ADV.SRI.ZUBAIR PULIKKOOL
R2 BY ADV.DR.PAULY MATHEW MURICKEN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 15-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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P.BHAVADASAN, J.

**Review Petition No.25 OF 2015 IN
C.R.P No.155 OF 2014**

Dated this the 15th day of January, 2015.

O R D E R

This review petition is directed against the order dated 13.11.2014 whereby the CRP was disposed of as follows:

“As on today, it is submitted by the learned counsel appearing for the respondent-decree holder that the amount due is Rs.2,05,160/-. It is not in dispute that Rs.96,532/- is already in deposit before the court below. Learned counsel appearing for the decree holder pointed out that the petitioner can deposit the balance amount within a time frame fixed by this Court.

2. Taking note of the various aspects, it is directed that the balance amount, after deducting Rs.96,532/- already deposited, shall be deposited within a period of three weeks from today in the court below as full and final settlement of the claim made by the decree holder. On deposit of the amount, the decree holder can move an application for withdrawing

the amount which shall be disposed of in accordance with law”.

2. Review petitioner points out that at the time of hearing of the CRP, learned counsel had prayed for reservation of rights of the petitioner to proceed under Order VIIIA of the Code of Civil Procedure against the original mortgagor which seems to have been omitted to be mentioned in the order passed by this Court.

3. Learned counsel appearing for the review petitioner pointed out that the petitioner is assignee from the mortgagor and in case he pays the mortgage amount, he is entitled to recover it from mortgagor as per law.

4. In spite of best efforts made by this Court, this Court is unable to agree that Order VIIIA CPC has any application to the facts of the case. That is a third party proceedings.

5. Suit was one for money. It is trite that all persons interested have to be made as parties to the suit. Probably, the petitioner would have volunteered to discharge the debt to safeguard his interest. But that is far from saying that he can initiate third party proceedings as against the original debtor in the same proceedings. It is not as if the rights of the petitioner

are not protected or safeguarded by a statute. Section 69 of the Contract Act and Section 92 of the Transfer of Property Act provides adequate remedy for the petitioner. Further his cause of action arises only on redemption of mortgage. Viewed from that angle, the prayer to proceed under Order VIIIA of Code of Civil Procedure is misconceived.

For the above reasons, this Court finds no reason to review the order already passed. The review petition is without merits and it is accordingly dismissed. The right of the petitioner to proceed in accordance with law will not be affected by any observations made in this order.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge.