

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

RP.No. 333 of 2015 IN OP(C).13/2015

(To review the judgment dtd.20.2.15 in O.P.(C) 13/15)

REVIEW PETITIONER/RESPONDENT No.1:

G.P.SELVARAJ, S/O. PONNUSWAMI,
NAIKARPADI, AGALI P.O.,
PALAKKAD - 678 581.

BY ADV. SRI.A.N.RAJAN BABU

RESPONDENTS/PETITIONERS & 2ND RESPONDENT:

-
1. SEBASTIAN, S/O.KUNJACKO,
PALLIPADAN HOUSE, KANJOOR P.O.,
ALWAYE TALUK, NOW RESIDING AT 6B/95,
MEENA ESTATE, SOURIPALAYAM ROAD,
COIMBATORE - 641 014.
 2. P.C. CHACKO, AGED 65 YEARS,
S/O. CHACKO, PALLIPADAN HOUSE,
KANJOOR P.O., ALWAYE TALUK,
NOW RESIDING AT 6B/95,
MEENA ESTATE, SOURIPALAYAM ROAD,
COIMBATORE - 641 014.
 3. M. PRABHASANKAR, (ADVOCATE RECEIVER),
15/81, AMBATTU COLONY COURT ROAD,
SULTANPET, PALAKKAD - 678 580.

BY SRI.K.MOHANAKANNAN
BY SRI.P.R.VENKETESH

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
30-03-2015, ALONG WITH R.P.No.337/2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

P.BHAVADASAN, J.

**Review Petition No.333 OF 2015 IN
O.P.(C) No.13 OF 2015&
Review Petition No.337 OF 2015 IN
O.P.(C) No.3099 OF 2014**

Dated this the 30^h day of March, 2015.

O R D E R

These review petitions are directed against the order dated 20.02.2015 in O.P.(C) Nos.3099/2014 and 13/2015. By the order under review, this Court, on materials then available before this Court, held that the 1st respondent in O.P.(C) No.13/2015 is disqualified from participating in the auction if any to be conducted by the Receiver. The reasons for holding so are given in the order. It is unnecessary to reiterate the same in this order.

2. In these review petitions, learned counsel appearing for the review petitioner pointed out that two grounds based on which the petitioner was found to be disqualified do not exist and therefore the substratum of the order is lost. If that be so, the

order ought to be reviewed. It is pointed out by the learned counsel that the charge regarding theft of electricity is unfounded, would be clear from the subsequent events and he has not been found guilty of the offence alleged. It is further pointed out that this Court was guided by the fact that a sum of Rs.85,000/- was due as arrears from the 1st respondent in O.P.(C) No.13/2015 but that is factually incorrect. According to the learned counsel, amount of Rs.85,000/- mentioned as arrears by this Court in its order was with the Receiver and if that be so, it could not be said that the review petitioner was a defaulter as held by this Court. Therefore, it is contended that the order cannot be sustained and it needs to be reviewed.

3. Both the contentions are without any basis. The fact that the petitioner was disqualified is not disputed even now. Whether the disqualification was proper or not was not a matter to be determined at the relevant time. Further, the reasons given by the petitioner to say that he cannot be charged with an

offence and he should not be disqualified were not brought before the court below when it accepted the Receiver's report and the 1st respondent was thereafter held to be disqualified.

4. It comes with little grace for the review petitioner to contend that this Court had erred in its finding. It may be said that the Receiver might have been received Rs.85,000/-. But, as rightly noticed by the 1st respondent in these petitions, two of the payments have been made after this Court called for a report from the court concerned which shows that at least there was considerable delay in paying the instalments and that is against the relevant agreement. If that be so, even though there might have been some error in this Court holding that even accepting the report of the court below that Rs.85,000/- was due, assuming that the said amount was with the Receiver, it cannot be disputed that there was considerable delay in paying the instalments.

If that be so, there is no justification for reviewing the order passed by this Court on 20.02.2015. At any rate, disqualification

imposed by the trial court still stands and if that be so, the person who is disqualified by the court below cannot be allowed to take part in the auction.

These review petitions are without merits and they are accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. To Judge.