IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

RP.No. 638 of 2015 (T)

(AGAINST THE JUDGMENT IN WP(C).NO. 20956/2008 DATED 03-02-2015)

REVIEW PETITIONER(S)/(ADDITIONAL RESPONDENTS 4 & 5):-:
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1. RANJAN M.,S/O.MUTHAIYAN CHETTIAR,
   SREEMANGALAM, PRACKANAM P.O.,
   PATHANAMTHITTA.

2. DEEPA SARA VARGHESE, D/O.O.V.VARGHESE,
   KIZHAKKEDATH, COLLEGE ROAD, PATHANAMTHITTA.

BY ADVS.SRI.K.T.SHYAMKUMAR
SRI.HARISH R. MENON

RESPONDENTS/PETITIONER & RESPONDENT 1 TO 3:-
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1. K.SAROJINI AMMA, AGED 79 YEARS,
   W/O.CHANDRASEKHARAN NAIR, RESIDING AT 'SAROJA' BHAVAN,
   VALIYAVILA, THIRUMALA P.O., THIRUVANANTHAPURAM-695 001

2. GENERAL MANAGER, CANARA BANK & OTHERS,
   CANARA BANK, THIRUVANANTHAPURAM-695 001

3. THE BRANCH MANAGER,
   CANARA BANK, ANCHAMADA, VATTIYOORKAVU,
   THIRUVANANTHAPURAM. PIN-695 001

4. C.VIJAYAKUMAR,S/O.LATE CHANDRASEKHARAN NAIR,
   T.C.8/1403, VALIYAVILA,THIRUVANANTHAPURAM-695 001

R1 BY ADVS. SRI.SUMAN CHAKRAVARTHY
SRI.S.EASWARAN
R2 & R3 BY SRI.P.GOPINATH MENON, SC, CANARA BANK

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 30-07-2015,ALONG WITH R.P.NO.646 OF 2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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R.P.NO.638/2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEX 1	**COPY OF THE APPEAL NO.13/2012 PENDING BEFORE THE DRT, ERNAKULAM.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

K. VINOD CHANDRAN, J.

R.P. Nos.638 & 646 of 2015

In

W.P(C). No.20956 of 2008 & OP(DRT) No.1546 of 2011

Dated this the 30th day of July, 2015.

<u>O R D E R</u>

The R.P. in both the petitions is only on the ground that Appeal No.13 of 2012 filed by the mother, as referred to in the judgment, was not against the dismissal of I.A. No.721 of 2011. One need not reiterate the facts, which are disclosed in the judgment. I.A. No.721 of 2011 filed by the mother/guarantor was under Rule 60 of Schedule II of the Income Tax Act, 1961 [for brevity, the Act of 1961] for setting aside the sale. Admittedly, no prior deposit as mandated in Rule 60 was made. It was noticed in paragraph 5 of the judgment that, the mother had filed a review from the order in I.A. No.721 of 2011 and had also filed Appeal No.13 of 2012 before the DRT. This Court in the judgment found that even in I.A. No.721 of 2011, serious contentions with respect to the irregularity of sale, was alleged by the mother. Hence, it was held that the appeal could consider the issue under Rule 61, wherein if irregularity is noticed, the DRT could direct the borrower/guarantor to make deposit of the amounts due and on such deposit, set aside the sale and re-convey the property too.

2. The review is in so far as to point out that Appeal No.13 of 2012 is not an appeal from I.A. No.721 of 2011, which invoked Rule 60. The appeal is also produced herein as Annexure 1, wherein the relief sought is as follows:

> *"A. To set aside the Annexure A3 order of Delivery and conformation of sale dated 29.03.2011 in D.R.C. No.2307 in O.A. No.311 of 2001 in the matter of Canara Bank, Anchamada Branch Vs. M/s. Sri. Vinayaka Buildings materials of 3 Ors."*

3. The contention now raised by the auction purchaser is that, by virtue of the findings in the judgment under review, the mother/guarantor has attempted to make considerable amendments to the appeal, thus bringing in the question of

irregularity in sale also. The directions of this Court would expand the scope of the appeal, which was confined to the above extracted prayer, is the contention.

4. Primarily, it is to be noticed that, the judgment itself was passed on 03.02.2015. In pursuance of the same, the parties had appeared before the DRT and had been contesting the same for the last six months. The learned counsel appearing for the Review Petitioners/purchasers would contend that only on an amendment petition being filed, they were made aware of the fact that necessary averments were not available in the appeal filed, which was only against the delivery and confirmation of sale.

5. This Court is unable to countenance such contention, since the judgment under review was passed in the presence of the purchaser and that the purchaser had also the benefit of the copy of the appeal when the matter was argued before this Court. Subsequently when the parties were relegated to the DRT, the purchaser never attempted to file a review from the said

judgment. It is only after considerable time expended in the DRT, in prosecuting the matter that the review petitioners turn around to file the above I.A. It is also brought to the notice of this Court that, an amendment application itself was filed as early as on 13.05.2015 with notice to the purchasers. There are no objections filed in the DRT nor was a review filed at least within 30 days from that I.A. The amendments are also stated to be only bringing forth the facts as to the irregularity in the sale conducted.

6. In any event, if the prayers in the appeal are allowed, on the finding that there was irregularity effected in sale, necessarily the Tribunal could invoke the jurisdiction under Rule 61 and direct payment of the amounts, which even as of now stands satisfied for reason of the mother having deposited the entire sale consideration. In such circumstances, on a finding of irregularity in sale, the sale would have to be set aside and then what remains would be only the consideration of the aspect of compensation, which this Court had directed in the judgment.

Hence despite the fact that the appeal is not from the I.A filed under Rule 60; nevertheless the DRT could consider the issue of irregularity in sale; which would vitiate the sale itself. No review would lie from each order, since the reasoning and the directions would have to be complied with by the DRT in its spirit and tenor.

The review petitions are dismissed for the reason of the delay, which on facts, is unjustifiable and also on merits on the reasoning above.

The time granted by this Court shall stand extended by two months.

Sd/-

K. VINOD CHANDRAN,
JUDGE

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