

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

RP.No. 767 of 2014 IN RFA (MISC.).762/2012

REVIEW PETITIONER/APPELLANT:

MANOJKUMAR T.V., AGED 40 YEARS
S/O.LATE RAMACHANDRAN, SHREYAS, KISSAN ROAD
CHALAD, MANAL, KANNUR 670 014

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.TS.HARIKUMAR

RESPONDENTS:

1. VIJAYAHOME LOANS LTD
G.V.S COMPLEX, 2ND FLOOR, 10TH A.MAIN
3RD BLOCK, JAYANAGAR, BANGALORE

REP. BY P/A. HOLDER MR.JAYACHANDRAN K.S.
OFFICE IN CHARGE OF BRANCH, VIJAYAHOME LOANS LTD.
KANNUR-670 001.
2. K.P.HARIDEV, AGED 46 YEARS
S/O.LATE KARUNAKARAN, BUSINESS, PROPRIETOR
KIANTHY BUILDERS, RESIDING AT MUKUND, PAYYAMBALAM
KANNUR-670 597.

R BY SRI.N.NAGARESH

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 09-12-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

**R.P. No.767 of 2014 in
R.F.A.No.762 of 2012**

Dated this the 9th day of December, 2015

ORDER

Antony Dominic, J.

This petition is filed by the appellant in the appeal essentially for a clarification of the judgment dated 26th August 2014 disposing of the appeal itself. The said appeal was filed by the appellant/claim petitioner aggrieved by the order passed in O.S.90/06. By the said judgment, this court ordered that since the execution in pursuance to the decree passed in O.S.90/06 was pending, the appellant will be entitled to raise their claim before the Execution Court and it was ordered that the Execution Court shall consider the entire matter untrammelled by the observations in the impugned order. However, in the last sentence, it was further ordered that such orders shall be passed "before proceeding with the further steps in execution in relation to the property claimed by the appellant".

2. Grievance now raised by the counsel for the appellant is that the decree holder is not proceeding with the execution in relation to the property claimed by the appellant and therefore in view of the aforesaid sentence occurring in the last paragraph of the judgment of

this court, the Execution Court is not considering the IA filed by the appellant for lifting the attachment.

3. In our view, there is substance in the grievance raised by the appellant. The appellant having purchased the property in question is entitled to have the application filed by it for lifting attachment considered by the Execution Court as ordered in the judgment in the RFA. That entitlement of the appellant cannot be defeated on the only ground that the decree holder is not proceeding with the execution against the property involved. Therefore, it is clarified that the IA filed by the appellant for lifting the attachment, which is stated to be pending before the Execution Court, shall be considered by the Execution Court irrespective of whether the property claimed by the appellant is proceeded against or not.

Review petition is closed.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
P.V.ASHA
JUDGE