IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WA.No. 437 of 2015 (J)
IN WP(C).27898/2014

AGAINST THE JUDGMENT IN WP(C) 27898/2014 of HIGH COURT OF KERALA
DATED 25-11-2014

APPELLANT/PETITIONER:

NAFEESA MELATHIL
D/O.KUNHAHAMMED, MARATHUMPALLY VEEDU, NEDIYIRUPPU P.O.
PIN 673688.

BY ADVS. SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENTS/RESPONDENTS:
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1. NEDIYIRUPPU SERVICE CO-OPERATIVE BANK LTD.1984
NDIYIRUPPU, REPRESENTED BY ITS SECRETARY, PIN 673638.

2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
MALAPPURAM-676505.

BY ADV. SRI.P.VENUGOPAL (1086/92)
BY SR. GOVERNMENT PLEADER SRI.MUHAMMED SHAFIM

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27-07-2015, ALONG WITH WA. 449/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.

W. A. Nos.437 & 449 of 2015

Dated this the 27th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

The appellant had availed an agricultural loan of ₹25,000/- from the respondent Bank, creating mortgage of the property concerned. Since the due amount was not satisfied on time, the Bank took appropriate steps for realization. Accordingly, ARC No.1484 of 1996 was filed, wherein a decree was passed, which was sought to be executed by filing E.P.41 of 2002 in ARC No.1474 of 1996. In the course of further proceedings, the property concerned was put to auction sale. Since there was no bidder, it was bid in the name of the Bank. The sale was subsequently confirmed on 17/03/2004. 'Sale Certificate' was issued and mutation was also effected in favour of the Bank.

2. Years after, the petitioner approached this Court by

filing W.P.(C) No.9061 of 2012 seeking for a direction to consider the request made by the writ petitioner so as to effect re-conveyance of the property, stating that the writ petitioner was ready to satisfy the entire liability to the Bank. Later, the property concerned was intended to be sold by the Bank and accordingly, an auction notification was issued. On coming across the same, the petitioner approached this Court by filing W.P.(C) No.27898 of 2014 seeking to intercept the auction proceedings, also referring to the pendency of W.P.(C) No.9061 of 2012. After hearing both the sides, the learned single Judge passed a common verdict on 25/11/2014 holding that the challenge sought to be raised by the writ petitioner was not liable to be entertained under any circumstances and that the Bank was having absolute right to proceed with the property which was already bid by them in their favour pursuant to a sale conducted in the year 2004. The said verdict is sought to be challenged by filing these writ appeals by the owner of the property.

3. Heard both the sides.

4. The case projected by the learned counsel for the appellant is that the property actually belonged to the appellant and that the husband of the appellant was a worker in the respondent Bank. On coming across some delinquency, disciplinary proceedings were initiated against the husband of the appellant and he was proceeded against. Subsequently, he was dismissed from service. Later, his dismissal from service was changed as an order of compulsory retirement vide order dated 17/12/2002 of the Industrial Tribunal. In the meantime, on account of the dismissal of the appellant's husband from service, the only source of income of the family was deprived off and the liability could not be satisfied to the Bank. The appellant contends that the property concerned having an extent of nearly eight cents was the only property available, fetching the value of nearly ₹16 lakh and the same was taken over in

respect of the paltry amount of loan procured by the borrower, which ended up in the sale effected in the year 2004. It is stated that the appellant was ready to satisfy the entire liability, cost and interest incurred by the Bank, so as to facilitate re-conveyance.

5. When the matter came up for consideration before this Court on 24/06/2015, the learned counsel for the Bank submitted taking note of the particular facts and circumstances, that the Bank had taken a decision to re-convey the property to the appellant, subject to satisfaction of a total sum of '<u>₹ 6 lakhs</u>' along with such other charges, within one month. In the light of the above submission, the following order was passed on 24/06/2015:

> “When these matters were taken up for consideration on the last occasion, this Court asked the parties to ascertain whether there was any chance for settlement and the Bank was also required to submit the terms, if it is possible.
>
> Today, when the matters are taken up for further consideration, the learned Counsel appearing for the Bank submits that, considering the particular facts and circumstances, with

> regard to the agricultural loan of Rs.25,000/-, the loss of employment of the petitioner's husband, who was an employee of the Bank and the subsequent proceedings at different stages, the Bank has expressed willingness to have the issue settled and to re-convey the property to the petitioner, if a sum of Rs. Six lakhs is paid along with such other charges within one month.
>
> The learned Counsel appearing for the petitioner submits that the petitioner is ready to grab the opportunity and is really grateful to the magnanimous stand taken by the Bank in getting the issue resolved and in saving the petitioner's family.
>
> List the matters for further consideration on 27.07.2015. It is open for the petitioner to move the matters after satisfaction of a sum of Rupees Six Lakhs, producing necessary proof in this regard."

6. Today, when the matter is taken up for further consideration, the learned counsel for the appellant submits that the appellant has satisfied a sum of '₹6 lakh' within one month as offered and ordered on 24/06/2015. The factual position is stated as correct by the learned counsel appearing for the Bank, who adds that the Bank has incurred a cost of ₹20,000/- towards the litigation expenses and such

other heads, which is also to be satisfied by the appellant, in view of the specific observations made by this Court in paragraph 2 of the order dated 24/06/2015. It is also stated that the appellant will have to satisfy the necessary expenses, so as to effect the re-conveyance (execution and registration of the necessary deed of conveyance) and that the Bank is ready to give effect to the order; thus proving their words by their deeds.

7. In the above circumstances, the appellant is directed to remit a further amount of ₹20,000/- to the respondent Bank within 'two weeks'. It will be for the appellant to get the relevant deed prepared, got executed and registered at their cost on production of the necessary proceedings. Appropriate steps shall be taken by the Bank to execute and register the conveyance in favour of the appellant at the earliest. The earnest efforts taken by the learned counsel appearing for the Bank and the magnanimous attitude shown by the Bank stand appreciated, thus solving the issue

once and for all.

These writ appeals are disposed of as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE