

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WA.No. 854 of 2015 () IN WP(C).7361/2014

AGAINST THE JUDGMENT IN WP(C) 7361/2014 of HIGH COURT OF KERALA
DATED 12-01-2015

APPELLANT(S)/RESPONDENTS 1 TO 4 IN WP(C):

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1. THE COMMISSIONER OF COMMERCIAL TAXES
THIRUVANANTHAPURAM
 2. THE COMMERCIAL TAX OFFICER-1.
O/O THE COMMERCIAL TAX OFFICER, PATHANAMTHITTA
 3. THE ADDITIONAL TAHSILDAR
TALUK OFFICE, KOZHENCERY
 4. THE VILLAGE OFFICER
KONNI VILLAGE OFFICE , KONNI, PATHANAMTHITTA

BY SR.GOV'T. PLEADER SRI.GEORGE MECHERIL

RESPONDENT(S)/PETITIONER & RESPONDENT 5& 6 IN WP(C):

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1. STATE BANK OF TRAVANCORE
REPRESENTED BY ITS CHIEF MANAGER, KONNI BRANCH
REPRESENTED BY ITS BRANCH MANAGER
 2. MR.DANIEL V. GEORGE
VALUTHUNDIL HOUSE, KONNI P.O, PATHANAMTHITTA DISTRICT
 3. MRS. ROSAMMA DANIEL,
W/O DANIEL V. GEORGE, VALUTHUNDIL HOUSE, KONNI P.O
PATHANAMTHITTA DISTRICT

R1 BY ADV.SATHISH NINAN, SC
BY SRI.SANTHOSH MATHEW

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.854 of 2015

Dated this the 21st day of May, 2015

JUDGMENT

Antony Dominic, J.

- 1.The official respondents in w.P(C).7361/14 are the appellants. The writ petition was filed by the first respondent bank seeking a direction to the second appellant to consider Exts.P3 and P4 applications preferred by them for the benefit of the Amnesty Scheme and to pass an order thereon. By the judgment under appeal, learned single Judge disposed of the writ petition upholding the maintainability of the applications made by the bank and directing consideration of the applications. It is this judgment which is under challenge.
- 2.Heard learned Special Government Pleader appearing for the appellants and standing counsel appearing for the first respondent bank.
- 3.First contention raised by the counsel for the appellants is that once the mortgaged property is sold by the bank and the title thereof is transferred

to the buyers, the bank has no locus standi at all to submit Exts.P3 and P4 applications for the benefit of Amnesty Scheme. It is also contended that in terms of the provisions of Section 23 B (7) of the Kerala General Sales Tax Act, 1963, an application for the benefit of Amnesty Scheme can be entertained only if it is made by an assessee and nobody else.

4.It is true that the property in question originally belonged to the defaulter and was mortgaged to the bank. The bank proceeded against the property and it was sold by the bank in a SARFAESI proceedings to the buyers who are not parties herein. It is also true that once sale certificate is issued, the bank ceases to have any interest over the property sold.

5.Be that as it may, the bank had the liability to the buyers to have conveyed to them encumbrance free title over the property. If that be so, the bank was duty bound to clear the liability that was due from the defaulters to the appellants.

6. Though it is true that in terms of the provisions contained in section 23 B (7) of the KGST Act, an application for the Amnesty Scheme is to be made by the assessee who is the defaulter, in so far as this case is concerned, the assessee has committed default in paying the dues of the bank and it was therefore that the mortgaged property was proceeded against under the SARFAESI Act. It was subsequently that the appellants initiated proceedings against the property and thereupon applications were made by the bank to which the property was mortgaged. Such applications, as rightly concluded by the learned single Judge, ought to be treated as those made by a representative for the assessee because liability sought to be wiped off is that of the defaulter, who owned the property.

7. In any case, whether it is by the assessee or by the bank and irrespective of the capacity of the bank, what is claimed in the applications is the benefit of section 23 B (7) of the KGST Act. In such a situation, we do not find that consideration of the applications, in the facts of this case, will not cause any prejudice to the appellants. We do not

find any reason to interfere with the judgment under appeal.

Appeal fails. It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge