

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WA.No. 1220 of 2015 () IN WP(C).31087/2006

APPELLANTS/PETITIONERS/RESPONDENTS 3 & 4::

1. JOSE PAUL
PROPRIETOR, J.J.CHEMICALS, PLASSERY HOUSE
9/344, T.B.ROAD, H.P.O.
THRISSUR.

2. SHEELA JOSE
W/O.JOSE PAUL, PROPRIETOR, J.J.CHEMICALS
PLASSERY HOUSE, 9/344, T.B.ROAD
H.P.O.THRISSUR.

BY ADV. SRI.T.C.SURESH MENON

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 &2:

1. TRICHUR CO-OPERATIVE BANK LIMITED
NO.87, MISSION QUARTERS, THRISSUR
REPRESENTED BY ITS GENERAL MANAGER, PIN-680001.

2. JOINT REGISTRAR
CO-OPERATIVE SOCIETIES (GENERAL), THRISSUR-680001.

3. THE REGISTRAR
CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM-695001.

R1 BY SRI.C.D.DILEEP

R2 AND R3 BY GOVERNMENT PLEADER MR. JOSEPH GEORGE.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL.K. NARENDRA, JJ.**

.....
W.A.No.1220 OF 2015
.....

Dated this the 8th July, 2015

J U D G M E N T

P.R.Ramachandra Menon, J:

This appeal has been preferred by the petitioners in I.A.No.2481 of 2015 who had filed concerned writ petition with the following prayers:

"i) to call for the records relating to Exhibit P16 order of the 1st respondent Joint Registrar and quash the same by the issuance of a writ of certiorari or any appropriate writ, order or direction as this Hon'ble Court deem fit to grant.

ii) Declare that respondents 1 & 2 being the statutory authorities are duty bound to protect the welfare of the petitioners Bank.

iii) issue such other appropriate writ, order or direction as this Hon'ble Court may deem just and fit in the circumstances of the case.

iv) grant the cost of this writ petition."

2. The appellants/petitioners who were respondents 3 and

4 in the writ petition had availed financial assistance from the respondent Bank and since repayment could not be effected on time, steps were taken by the Bank in accordance with law. Finally, the property over which mortgage was created, was put to sale and the same was purchased by the Bank way back in the year 2003 and the sale was confirmed. Subsequently, the proceedings were sought to be challenged by filing a petition before the Joint Registrar of Co-operative Societies, invoking the power and procedure under Rule 176 of the Kerala Co-operative Societies Rules, 1969. The Joint Registrar rescinded the resolution of the Bank to have purchased the property, which was challenged by the Bank by filing the writ petition as aforesaid. Pursuant to the sale, the sale certificate was registered as borne by Ext.P6. In the meanwhile, another writ petition was filed by the appellants herein as W.P.(C) 12765 of 2013. Both the above matters were considered together by the learned Single Judge, who passed the final verdict on 20.12.2014, whereby the order passed by the Joint Registrar was set aside. However, considering the prayer of the appellants herein, they were

permitted to wipe off the liability by way of 'six' equal monthly installments, beginning from January, 2015 with interest as specified. It was also made clear that once the amounts were paid in accordance with the above directions, the property shall be reconveyed at the expense of the petitioners herein, in view of the resolution already taken by the Bank to reconvey the property, subject to satisfaction of a sum of Rs.15,01,000/-plus interest. After disposal of the above cases, the appellants herein filed I.A. 2481 of 2015 seeking for a direction to the first respondent Bank to take requisite steps to get the Document No.4701/2004, Sub Registry Office, Kuttanelloor, Thrissur (Ext.P6 sale deed) cancelled at the expense of the petitioners herein, so as to spare the additional liability of Rs.6,29,900/- which was to be paid, if a proper sale deed was to be executed to re-convey the property to the petitioners.

3. The greivance of the appellants is that, even though they were ready to satisfy the entire liability so as to obtain reconveyance of the property from the Bank, if it is to be effected by way of execution and registration of a sale deed, a huge

extent of liability of about 6.29 lakhs was to be incurred by way of stamp duty. It was in the said circumstance that the petitioners/appellants sought for a direction from this Court to direct the Bank to cancel the sale deed already executed and to facilitate reconveyance. This was considered by the learned single Judge, who observed that there was no merit in the I.A., as the attempt on the part of the petitioner was only to evade stamp duty,, which could not be acceded to and accordingly, the I.A. was dismissed. This in turn is under challenge in this appeal.

4. Heard the learned Counsel for the appellants as well as the learned Government Pleader appearing for the respondents.

5. After hearing both the sides, this Court finds that the prayer sought for in the above I.A., was not a subject matter of consideration in the writ petition and hence no appeal as such is maintainable, in respect of the order passed by the learned Single Judge declining interference in the I.A. The nature of the pleadings and prayers raised reveals that the attempt of the appellants/petitioners is only to wriggle out of the liability from satisfying the stamp duty payable in accordance with the

relevant provisions of law. There is an observation by the learned Single Judge in the order dated 04.03.2015, which is under challenge in this appeal, to the effect that no provision of law in support of the case projected by the petitioners, so as to effect cancellation of deed was pointed out. There is a case for the appellants herein that cancellation of deed is envisaged under the Kerala Stamp Act as well, particularly by virtue of the stamp duty separately prescribed under Article 15, other than the course to be pursued under Article 14. Reliance is sought to be placed on the decision rendered by a Division Bench of this Court in W.A. No. 182/10 facilitating execution of cancellation deed, as sought for by the appellants herein.

6. The learned Government Pleader points out that, pursuant to the sale effected in the instant case, the sale certificate was caused to be registered in terms of the relevant provisions of law and that, by virtue of the mandate of Rule 183 of the relevant Rules, registration is compulsory so as to effect reconveyance. This Court does not intend to express anything with regard to the course to be pursued for effecting

reconveyance, as it was not a subject matter of the writ petition. It is open for the parties concerned to have the liability satisfied facilitating reconveyance of the property to the appellants herein in accordance with the relevant provisions of law. No orders as to cost.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**ANIL K. NARENDRA,
JUDGE.**