

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WA.No. 1399 of 2015 () IN OP (DRT).86/2015

AGAINST THE JUDGMENT IN OP (DRT) 86/2015 DATED 30-06-2015

APPELLANT(S)/2ND RESPONDENT :-

A.K.S.SARAVANAN
S/O.SHRI A.K.SUBRAMANIAN
RESIDING AT IAISARAVANA ILLOM, MAHADEVAPURAM
TAMIL NADU-641305.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 & 3 :-

1. V.SOMANATHA PILLAI
S/O.VELAYUDHAN PILLAI, RESIDING AT KARTHIKA
KEERTHI NAGAR, ELAMAKKARA, KOCHI-682 026.
2. M/S.INDIAN BANK
M.G.ROAD, ERNAKULAM, REPRESENTED BY ITS MANAGER
PIN 682 031.
3. THE RECOVERY OFFICER
DEBTS RECOVERY TRIBUNAL, PANAMPILLY NAGAR
KOCHI-682 036.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY ADV. SRI.S.EASWARAN, SC FOR BANK
R1 BY SRI.P.SANTHALINGAM (SR.)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-07-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.1399 of 2015

Dated this the 3rd day of July 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellant as well as the learned counsel appearing for the first respondent/writ petitioner. This writ appeal has been filed against the judgment of the learned Single Judge dated 30.6.2015 in O.P (DRT) No.86 of 2015. The appellant is an auction purchaser in the sale of the assets under the Kerala Revenue Recovery Act, which took place in the year 2008. The borrower approached the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal and thereafter filed W.P.(C) No.2738 of 2007 before this Court. The auction purchaser filed W.P.(C) No.28840 of 2008 before this Court for delivery of possession. Both the writ petitions were decided by the learned Single Judge vide common judgment dated 8.8.2011. It is useful to quote the operative portion of the said judgment, which is to the following effect :-

“In view of the fact W.P.(C) No.2738/2007 is dismissed, there cannot be any impediment for delivery of the property to the petitioner, pursuant to the sale

proceedings by the Recovery Officer. Accordingly, the 4th respondent in that writ petition namely, the Recovery Officer, Debt Recovery Tribunal, Kerala and Lakshadweep, Ernakulam shall take appropriate steps to deliver the property sold to the petitioner in that writ petition to him and take it to its logical conclusion, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment."

Against the said judgment of the learned Single Judge, the borrower filed two writ appeals as W.A. Nos.1214/2011 and 1224/2011. Both the writ appeals came to be dismissed by the Division Bench of this Court vide common judgment dated 25.5.2015. Paragraph 10 of the said judgment reads as follows :-

"W.A.1214/11 arises from W.P.(C) 28840/08 filed by the purchaser of the property sold in auction. He having purchased the property and satisfied all the conditions thereof is entitled to get delivery of the property. It was therefore that the learned Single Judge directed the Recovery Officer to complete the formalities and deliver the property to him within one month. Such a direction of the learned Single Judge cannot be said to suffer from any infirmity justifying interference.

In the result, the appeals are dismissed."

Against the judgment of the Division Bench dismissing the writ appeals, the borrower filed a Special Leave Petition before the

Apex Court, which is said to be pending. The borrower filed an original petition as O.P (DRT) No.86 of 2015 before this Court seeking the following reliefs :-

- “a) call for the records connected with the case;
- b) Issue a direction to the 3rd respondent not to proceed further to dispossess the petitioner from his residential house for three weeks or till the Supreme Court passes an order within that time.”

The said original petition was entertained and disposed of by the learned Single Judge on 30.6.2015 itself. The learned Single Judge although noted that the Recovery Officer is acting upon the judgment of this Court, which was affirmed by the Division Bench and hence, it is not proper for this Court to entertain the original petition, deferred the coercive steps for a period of one week. The auction purchaser, aggrieved by the said direction to defer the coercive steps has come up in the writ appeal.

2. Learned counsel for the appellant submits that when both the writ appeals having been dismissed and the matter has become final and there is a mandamus for delivering possession, the said mandamus cannot be interdicted by filing another writ petition before this Court. More so, against the

judgment of the Division Bench, a Special Leave Petition has already been filed before the Apex Court, which is said to be pending.

3. Learned counsel for the borrower/petitioner submits that the learned Single Judge has granted indulgence to enable the borrower to approach the Division Bench.

4. The Division Bench judgment in the writ appeals was the judgment on merit, dismissing the writ appeals and confirming the mandamus issued by the learned Single Judge. The Division Bench has also directed the Recovery Officer to complete the formalities and deliver the property within one month. It is open for the borrower to have obtained appropriate orders from the Apex Court, where Special Leave Petition is said to have been pending. We are of the view that after the judgment of the Division Bench on 25.5.2015, the learned Single ought not to have passed any order for deferring the coercive steps. The order to that effect is to be obtained by the borrower in the Special Leave Petition, which is already been filed and said to be pending. We are of the view that the judgment of the learned Single Judge in so far as it deferred the

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coercive steps for a period of one week is unsustainable and is liable to be set aside.

In the result, this writ appeal is allowed. The judgment of the learned Single Judge dated 30.6.2015 in O.P (DRT) No.86 of 2015 is set aside.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

//TRUE COPY//

P.A. TO JUDGE

Jvt