IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 8560 of 2015 (T)

PETITIONER :

BIJU VARGHESE,
S/O.VARGHESE, PLAMKUDIYIL, KALIYAR P.O.,
THODUPUZHA, IDUKKI DISTRICT.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.S.SREEDEV

RESPONDENT(S):
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1. RECOVERY OFFICER,
   OFFICE OF THE RECOVERY OFFICER,
   DEBTS RECOVERY TRIBUNAL, 8TH FLOOR, KSHB BUILDING,
   PANAMPILLY NAGAR, KOCHI-682 036.

2. ING VYSYA BANK,
   PANAMPILLY NAGAR BRANCH, KOCHI-682 016,
   REPRESENTED BY ITS AUTHORIZED OFFICER & CHIEF MANAGER.

R2 BY ADVS. SRI.K.K.JOHN
SRI.ASISH K.JOHN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 8560 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1 : TRUE COPY OF THE E-MAIL COMMUNICATION DATED 20-02-2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT P2 : TRUE COPY OF THE STATEMENT OF ACCOUNT OF THE PETITIONER IN THE SOUTH INDIAN BANK, KADAVANTHARA BRANCH FOR THE PERIOD FROM 01-11-2014 TO 28-02-2015.

EXT P3 : TRUE COPY OF THE MEDICAL CERTIFICATE DATED 03-03-2015.

EXT P4 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 06-03-2015.

EXT P5 : TRUE COPY OF THE ORDER DATED 09-03-2015 ISSUED BY THE 1ST RESPONDENT, WHICH WAS RECEIVED BY THE PETITIONER ON 16-03-2015.

RESPONDENT(S)' EXHIBITS: NIL
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/TRUE COPY/

P.A.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.8560 of 2015

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Dated this the 16th day of June, 2015

JUDGMENT

The petitioner is an auction purchaser. He auctioned a property through E-auction sale from the Recovery Officer attached to the Debts Recovery Tribunal. The auction was conducted on 20.2.2015. On that day, he remitted 25% of the amount. As per Rule 57 of Second Schedule to Income Tax Act, the petitioner has to remit balance on or before fifteenth day from the date of the sale of the property. The petitioner did not remit the amount within the time.

2. The petitioner filed an extension petition on 6.5.2015. On that day, seeking permission to remit the amount within one month. This was rejected as per Ext.P5 by the Recovery Officer stating that as per Rules 57 and 58 of Second Schedule to Income Tax Act, no extension of time can be granted. The petitioner challenges the above order in this writ petition.

3. Learned counsel for the Bank submits that the Bank have no objection if this Court exercises discretionary relief to extend the time.

4. Rule 57 of Second Schedule to Income Tax Act, provides as follows:

> "57. Deposit by purchaser and resale in default.
>
> 1. On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the properpty shall forthwith be resold.
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> 2. The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property."

5. Rule 58 also refers to procedure in default of payment, which reads as follows:

> "In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold."

6. Essentially, the question before this Court whether the Recovery Officer has power to extend the time which runs out on

account of the mandate under Rule 57(2). On reading of Rule 58 would indicate that it is only an enabling provision to the Recovery Officer to exercise on account of the default in payment. There is no provision as such for extending the time under Rule 57. Rule 58 necessarily indicate the power vested with the Recovery Officer to forfeit in case of default. The default on account of non-payment of the amount within the time as indicated under Rule 57(2). No doubt, the Recovery Officer has sufficient power to refuse the extension of time, but, since there is no provision as such for extending the time, that does not conclude that he has no power at all to extend the time. As has been noted above, Rule 58 only mandates for forfeiting the amount on account of the default committed. This forfeiture, in fact, is to the Government for the obvious reason that it is public revenue being collected to the Government, but in this case, the auction is being conducted on behalf of the Bank. Therefore, that forfeiture as such would not apply, as there is no due to the Government. In such circumstances, only question that could be left to the decision of the Recovery Officer is whether any prejudice will be caused on account of any time extension is given.

7. It is submitted by the learned counsel for the petitioner that the defaulter remained *ex parte* throughout the sale proceedings and he has not contested even the sale of the property.

In such circumstances, I am of the view, if there is no prejudice being caused to anyone, the Recovery Officer should have allowed the petitioner to remit the balance amount by extending the time originally granted. It is made clear that this would be subject to any challenge to be made by the aggrieved. Accordingly, the impugned order is set aside. The petitioner is directed to remit the balance amount within ten days from the date of receipt of a copy of this judgment. Thereafter, necessary sale certificate shall be issued in favour of the petitioner. It is made clear that if the petitioner fails to remit any amount within the time indicated above, the Recovery Officer is at liberty to proceed with re-auction of the property in accordance with law.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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