IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 10309 of 2015 (K)

PETITIONER(S):

KERALA STATE CIVIL SUPPLIES CORPORATION LTD.
REPRESENTED BY ITS MANAGING DIRECTOR
MAVELI BHAVAN, MAVELIROAD, KADAVANTHARA
KOCHI - 682 020.

BY ADV. SMT.MOLLY JACOB, SC, SUPPLYCO

RESPONDENT(S):

1. THE AUTHORISED OFFICER,
HOUSING DEVELOPMENT FINANCE CORPORATION (HDFC)LTD.
M.G.ROAD, KOCHI - 682 016.

2. M.ABDULLA KUNJI,
S/O.MOHAMMED KUNJI, MANGAD HOUSE, PALAKKAMATTOM
PATHADIPALAM, CHANGAMPUZHA NAGAR P.O., COCHIN - 682 033.

3. KHAMARUNNISSA
W/O.M.ABDULLA KUNJI, MANGAD HOUSE, PALAKKAMATTOM
PATHADIPALAM, CHANGAMPUZHA NAGAR P.O., COCHIN - 682 033.

4. AJITH REJILAL
C/O.THE AUTHORISED OFFICER
HOUSING DEVELOPMENT FINANCE CORPORATION (HDFC) LTD.
M.G.ROAD, KOCHI - 682 016.

5. REGIONAL DIRECTOR
RESERVE BANK OF INDIA, BAKERY JUNCTION, SERVICE ROAD
VAZHUTHACAUD, TRIVANDRUM - 695 033.

6. THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR
EDAPALLY RAILWAY STATION ROAD, OLD N.H.CHERANALLOOR
PONEKKARA, EDAPALLY, KOCHI - 682 024.

R1 BY ADVS. SRI.K.K.CHANDRAN PILLAI (SR.)
SRI.ARUN ANTONY
SMT.S.AMBILY
SMT.K.V.SHENU
R4 BY ADV. SMT.P.DEEPA MOHAN
R BY GOVERNMENT PLEADER SMT.SHOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 10309 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE LETTER DT.26-11-2012 OF THE ASSISTANT MANAGER (LEGAL) OF HDFC LTD. ADDRESSED TO THE PETITIONER CORPORATION.

EXT.P2 : TRUE COPY OF THE PROCEEDINGS DT.19-7-2013 ISSUED BY THE CHAIRMAN AND MANAGING DIRECTOR OF THE PETITIONER CORPORATION.

EXT.P3 : TRUE COPY OF THE LETTER DT.17-6-14 ISSUED BY THE HDFC LTD. TO THE PETITIONER CORPORATION.

EXT.P4 : TRUE COPY OF THE LETTER DT.13-1-15 SENT TO THE CHIEF MANAGER, HDFC BY THE MANAGER (FINANCE)

EXT.P5: TRUE COPY OF THE LETTER DT.21-1-15 SENT BY THE HDFC LTD.TO THE ASSISTANT MANAGER (P&R) OF THE PETITIONER CORPORATION.

EXT.P6 : TRUE COPY OF THE LETTER ISSUED TO THE SUB REGISTRAR, EDAPALLY, BY THE GENERAL MANAGER OF THE PETITIONER CORPORATION.

EXT.P7 : TRUE COPY OF THE LETTER DT.9-3-2015 ADDRESSED TO THE REGIONAL DIRECTOR RESERVE BANK OF INDIA BY THE MANAGING DIRECTOR OF PETITIONER CORPORATION.

EXT.P8 : VALUATION REPORT OF THE VILLAGE OFFICER, THRIKKAKARA.

EXT.P9 : LETTER OF THE THAHASILDAR, KANAYANNUR DATED 03.06.2003 FORWARDING DEMAND DRAFT TO THE MANAGING DIRECTOR OF THE RESPONDENT CORPORATION.

RESPONDENT(S)' EXHIBITS

EXT.R1(A) : COPY OF RECEIPT ISSUED BY THE H.D.F.C TO THE ADVOCATE COMMISSIONER DATED 17.1.2014.

EXT.R1(B) : COPY OF LETTER DATED 17.2.2003 ISSUED TO DISTRICT COLLECTOR, ERNAKULAM, DY TAHSILDAR (RR) ETC.

EXT.R1(C) : COPY OF LETTER RECEIVED FROM THE TAHSILDAR KANAYANNOOR DATED 30.1.2004

EXT.R1(D) : COPY OF LETTER DATED 12.2.2004 GIVING DETAILS AS REQUESTED IN EXT.R1(C).

/TRUE COPY/

P. A. TO JUDGE

Pn

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 10309 of 2015

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Dated this the 13th day of August, 2015

J U D G M E N T

The petitioner is the Kerala State Civil Supplies Corporation. The 2nd respondent was their authorised transporter. There are certain liabilities incurred by the 2nd respondent to the Corporation and the Corporation initiated revenue recovery proceedings to recover the same.

2. One of the asset of the 2nd respondent being Apartment No.A5, Travancore Residency Complex in Sy.No.81/1B, 81/1C of Chuttupadukara in Edappally North Village was attached under the revenue recovery proceedings.

3. The 1st respondent is a non-banking Financial Institution. The Institution had lent loan to respondents 2 & 3 in the year 1998 for purchase of the above apartment. On account of default in repayment of the loan amount, the Institution initiated SARFAESI proceedings.

4. Admittedly, the liability to the Corporation was after 1998. Therefore, they cannot dispute that the right of priority is not belonging to the Financial Institution in respect of the above apartment.

5. On knowing that, there is an attachment by Ext.P1 letter, the Financial Institution approached the petitioner to lift the attachment. It is stated in Ext.P1 as follows:

> *"8. Therefore it is requested to your esteemed office that the Revenue Recovery proceedings initiated against the undivided share of the aforesaid Abdula Kunji in the aforesaid apartment may be withdrawn in order to enable HDFC Ltd. to proceed with the steps initiated under the Securitization Act for the public sale of the apartment. The HDFC Ltd undertakes and assures that the excess amount after deducting the home loan arrears from the sale consideration of the apartment will be remitted to the Civil Supplies Corporation on proper acknowledgment after the sale."*

6. Thereafter, on account of non-consideration of Ext.P1, Financial Institution has approached this Court by filing WP(C) No.10787/2013. Pursuant to the direction of this Court, the request of the Financial Institution was considered by the petitioner as per Ext.P2. The Corporation made certain conditions in Ext.P2, which reads as follows:

> *"In the above circumstances HDFC Bank's suggestion of withdrawing attachment initiated by the Corporation and to accept their offer that any excess amount after deducting the home loan arrears from the sale consideration of the apartment will be*

> *remitted to Kerala State Civil Supplies Corporation Ltd. cannot be accepted.*
> *Since the property of the defaulted contractor is a joint property with his wife Corporation is entitled to the 50% of the value of the property and that share shall be recouped to the Kerala State Civil Supplies Corporation on sale of the property in auction. Corporation is ready for auctioning the property jointly with HDFC Bank on the condition that sale proceeds will be apportioned equally between the Corporation and HDFC Bank."*

Thus it has to be noted that the withdrawal of attachment was based on the condition as referred in Ext.P2. On lifting the attachment, the respondent Financial Institution proceeded with sale of the apartment. It appears that acting upon Ext.P2, Ext.P3 was issued by the Financial Institution. In Ext.P3 communication it is stated as follows:

> *"As per the reference 2nd cited you have agreed to sell the property jointly on the condition that the sale proceeds can be appropriated equally among us. We are ready to deposit half of the sale proceeds with you if your are entitled for the same under law."*

7. The respondent in Ext.P3 itself as noted that value of the property is fixed at ₹15,00,000/- and also indicated that if the petitioner is entitled as per the law, they are prepared to pay ½ of the amount that would fetch in the sale proceedings.

8. Thus it has to be noted that Exts.P2 & P3 have contained promises and reciprocal promises in relation to the sale of the apartment. In Ext.P3, the respondent Financial Institution also informed the petitioner that they will communicate the date of sale.

9. Since there was no immediate response to Ext.P3, the apartment was put on sale on 08.12.2014 . The apartment was purchased by the 4th respondent for ₹16,00,000/-, ₹1,00,000/- above the reserve price.

10. After the sale, the petitioner issued Ext.P4 communication dated 13.01.2015 stating that, as per the directions of the Board of Directors, the flat was valued by an authorised valuer of SupplyCo and reserve price was fixed as ₹29.4 lakhs and the Board also have accorded sanction to sell the apartment at ₹29.4 lakhs.

11. This was responded by the Financial Institution by Ext.P5 stating that, since there was no response in spite of Ext.P3 and several other communications, they were constrained to sell the flat on 08.12.2014. It is also stated that, they are also legally bound to complete the sale in terms of Securitisation in a time bound manner. It is stated that, since the sale was for lesser

amount than due to them they have no liability to the petitioner.

12. In the facts and circumstances as above, there are two issues arising for consideration:

(i) Whether the sale conducted is irregular or not.

(ii) Whether the petitioner is entitled for apportionment of sale proceeds.

13. It is to be noted that, there are exchanges of promises between the petitioner and the 1st respondent. In the context of invoking Public Law remedy, this Court is having any limited scope of consideration of the issues involved. The respondent Financial Company would not have otherwise amenable but for the proceedings initiated under the SARFAESI Act under article 226 of the Constitution of India. Essentially, the issue has arisen based on the promises and reciprocal promises made between the petitioner and the Financial Institution on account of an attachment effected pursuant to Revenue Recovery Act. Therefore, the scope of examination of the issue is limited to the sale conducted by lifting the attachment under the Revenue Recovery Act. The attachment has been lifted on a condition stipulated by the petitioner that the Financial institution shall remit fifty percent of value to the petitioner. There is no

unqualified acceptance of the condition but nevertheless it seems that Institution has no difficulty in accepting the condition provided in sale it would fetch such amount to discharge the liability of the petitioner. It is in the such circumstances, Ext.P3 appears to have been issued by the Institution stating that, if under the law the petitioner is entitled they are prepared to pay the amount. It has been pointed out to the petitioner about the value of the apartment is only ₹15,00,000/-. It is also reported that sale date will be intimated. Apparently, the Financial Institution proceeded for sale since there was no concrete counter proposal on the side of the petitioner and by the time proposal was received from the petitioner the sale has taken place.

14. In such circumstances, this Court is of the view that, though the Financial Institution could not have reneged from the promises, nevertheless when they communicated the proposal for sale, if there was any objection on the side of the petitioner, that ought to have been communicated then and there but instead they have responded only after six months and therefore the Financial Institution could not be blamed for conduct of sale. Therefore this Court is of the view that, sale is perfectly justifiable.

15. The next question is whether the petitioner is entitled

for apportionment of sale. Admittedly, a mortgage was created in favour of the petitioner, certainly the right of the mortgagee is a prior right to reckon in terms of Section 48 for realization considering the facts and circumstances of the case. Primarily this apartment itself has been purchased with the loan advanced by the Institution. In that view of the matter, there cannot be any dispute that the right of priority goes with the Financial Institution. It is also to be noted that, the liability has been created by the defaulter only after purchase of the apartment. It is also noted that the charge created under the Revenue Recovery Act is only after the requisition made by the petitioner.

16. In that view of the matter, it can be concluded that the petitioner has no right to claim any share in the sale proceeds.

Accordingly, this writ petition is dismissed. No costs.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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