

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WP(C).No. 15109 of 2015 (K)

PETITIONER:

MUHAMMED HANEEFA, AGED 45 YEARS, S/O.ABBAS,
MASTHIKUNDU HOUSE, MULIYAR (PO), KOZHIKODE DISTRICT.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENT:

MAHATHMAJI HOUSE CONSTRUCTION CO-OPERATIVE SOCIETY LIMITED
NO.C.835, M.G.NAGAR, MULIYAR,
KASARAGOD DISTRICT,
REPRESENTED BY ITS SECRETARY.

R1 BY ADV. SRI.D.KRISHNA PRASAD
R1 BY ADV. SMT.MINI V.MENON
R1 BY ADV. SRI.P.VISHNU PRASAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 15109 of 2015 (K)

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

P1 - TRUE COPY OF THE PROCLAMATION OF SALE DATED 16.03.2015.

P2 - TRUE COPY OF THE REPRESENTATION DATED 14.05.2015.

P3 - TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER DATED NIL.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 15109 of 2015 (K)

Dated this the 14th day of December, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondent Society, apart from perusing the record.

2. The petitioner, a borrower from the respondent Society, assailed Ext.P1 sale notice.

3. The learned counsel for the petitioner has submitted that the petitioner, despite his best efforts, could not repay the loan amount owing to stringent financial conditions faced by him. Accordingly, the petitioner has sought the indulgence of this Court for a direction to the respondent Society to receive from the petitioner the outstanding loan amount in instalments.

4. Before appreciating the submissions of the learned counsel for the respondent Society, I may have to observe that expansive as the jurisdiction of Article 226 of the Constitution of India is, I am afraid, it does not go to the extent of interdicting the contractual terms, especially in a financial transaction involving public money, so as to compel the respondent Society to agree for instalments.

5. Be that as it may, evidently being fully aware of the difficulties involved in realising the loan amounts through the process of invidious sale of the property, the learned counsel for the respondent, to his credit, evidently on instructions, has submitted that the respondent Society is willing to collect the outstanding loan amount in eight monthly instalments.

In the facts and circumstances, essentially based on the concession made by the learned counsel for the respondent Society, this Court disposes of the writ petition with a direction to the petitioner to pay the entire outstanding loan amount in eight equal monthly instalments starting from 01.01.2016. Needless to observe that, if the petitioner fails to deposit the said amount within the stipulated time, the respondent Society is at liberty to proceed further without recourse to this Court.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

