

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 20956 of 2008 (T)

PETITIONER(S):

**K. SAROJINI AMMA, AGED 79,
W/O CHANDRANSEKHARAN NAIR, RESIDING AT 'SAROJA' BHAVAN
VALIYAVILA, THIRUMALA P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENT(S):

- 1. GENERAL MANAGER, CANARA BANK & OTHERS
CANARA BANK, THIRUVANANTHAPURAM.**
- 2. THE BRANCH MANAGER,CANARA BANK,
ANCHAMADA, VATTIYOORKAVU, THIRUVANANTHAPURAM.**
- 3. C.VIJAYAKUMAR, S/O.LATE CHANDRASEKHARAN NAIR,
T.C.8/1403, VALIYAVILA
THIRUVANANTHAPURAM.**

ADDITIONAL RESPONDENTS:

**R4. RAJAN M., S/O MUTHAIYAN CHETTIAR
SREEMANGALAM, PRACKANAM P.O
PATHANMTHITTA**

**R5 DEEPA SARA VARGHESE
D/O O.V. VARGHESE
KIZHAKKEDATH, COLLEGE ROAD,
PATHANAMTHITTA**

(ADDL. R4 & R5 ARE IMPEADED AS PER ORDER DATED 15.3.11 IN I.A NO. 4104/11)

**R4 & 5 BY ADV. SRI.K.T.SHYAMKUMAR
R BY SRI.P.GOPINATH MENON, SC, CANARA BANK**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-02-2015,
ALONG WITH OPDRT. 1546/2011, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE REPLY TO THE PETITIONER.
- EXT.P2 COPY OF THE LETTER TO THE 2ND RESPONDENT DATED 6.3.05.
- EXT.P3 COPY OF THE COMMUNICATION FROM THE PETITIONER TO THE 2ND
RESPONDENT DTD.19.3.08.
- EXT.P4 COPY OF THE COMMUNICATION FROM THE 2ND RESPONDENT BANK TO
THE PETITIONER DTD.18.3.08.
- EXT.P5 COPY OF THE PROPOSAL SENT BY THE PETITIONER TO THE BANK
DATED 5.4.08.
- EXT.P6 COPY OF THE PROCLAMATION OF THE SALE OF THE HON'BLE DEBT
RECOVERY TRIBUNAL ERNAKULAM DATED 29.5.08.
- EXT.P6(a) COPY OF THE SLAE PROCLAMATION NOTICE.

RESPONDENTS EXHIBITS: NIL

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.

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**W.P.(C) No.20956 of 2008 - T &
O.P(D.R.T) No. 1546 of 2011 - O**
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Dated this the 3rd day of February, 2015

J U D G M E N T

The writ petition and original petition are filed by the mother and the son respectively. The admitted facts are that the mother stood as a guarantor for the son, the latter of whom availed a loan from the respondent Bank. The mother also mortgaged her ancestral property, as security for the loan.

2. On default being committed, the Bank proceeded against the property. The mother filed W.P.(C) No.20956 of 2008, seeking instalments. The mother was granted an interim stay of confirmation of sale on 19.01.2011. The same was modified directing remittance of Rs.22.50 lakhs, when it was submitted before Court that, the sale had already taken place and the purchasers had

paid the amounts bid in auction. The said condition having not been complied with, the interim order was vacated by order dated 25.03.2011.

3. The sale proclamation in D.R.C 2307/CB had taken place on 06.12.2010 and the auction sale was conducted on 19.01.2011. The petitioner is said to have filed I.A 721 of 2011 under Rule 60 of Schedule II of the Income Tax Act, 1961, which is applicable to the proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The said application was dismissed on 22.03.2011, since no pre-deposit as indicated in Rule 60 was made. The interim order granted by this Court in W.P.(C)No.20956 of 2008 also having been vacated, the sale was confirmed on 29.03.2011.

4. The son, then approached this Court with the other original petition, seeking setting aside of the sale and for re-conveyance of the property. The auction purchasers were impleaded as the additional respondents 3 and 4. The son is said to be now absconding and the mother on the

strength of the other writ petition, seeks to urge the plea of the son also, since it is the mother's property, which has been sold in auction.

5. The DRT is said to have put the purchaser in possession by an order dated 11.05.2012; the purchaser are said to have not enforced the said order till date since, the mother, an old widow is staying in the residential premises. The mother filed Appeal No.13 of 2012 on 06.09.2012, against the dismissal of the I.A and filed I.A No. 2461 of 2012, to review the order in I.A No. 721 of 2011. In the said proceedings, the mother was directed to deposit the entire sale consideration, which she has deposited on 24.10.2012.

6. This Court would not consider the various prayers made in the writ petitions since, valid proceedings are pending before the DRT, the authority, which had conducted the sale. It is submitted by the learned Counsel that the mother had in I.A No. 721 of 2011 raised serious objections with respect to the conduct of sale itself. The

specific contention raised is that I.A No. 721 of 2011 was not one filed under Rule 60 Schedule II, but one under Rule 61 of the said schedule. If that be so, it is contended that there was no pre-deposit mandated and only by clause (b) of the proviso to Rule 61, a disallowance is stipulated on the applicant not making the deposit. It is contended that the I.A should be treated as one under Rule 61 and since, a deposit has now been made, definitely the DRT could consider the issue of the irregularity in the sale proceedings. Definitely, that is an argument, which could be raised before the DRT and if any irregularity is found, I.A No. 721 of 2011 has to be treated as one under Rule 61 especially since, the deposit has now been made. However, it is made clear that on the strength of the deposit, the mother cannot revert back to Rule 60 and claim setting aside of sale on that basis.

7. The Appeal No.13 of 2012 would be considered taking into account, the compelling arguments made by the learned Counsel herein, which are noticed herein above. It

is also directed that the DRT dealing with the appeal would also be entitled to order just compensation, if the sale is set aside on the aspect of irregularity; to the purchaser, which compensation would also have to be paid before the appellant in the appeal, could claim re-conveyance of the property. The DRT shall, if all parties are already on record before it, endeavour to dispose of the matter expeditiously at any rate within four months from today.

The writ petition and original petition are disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge