

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 22764 of 2015 (U)

PETITIONER:

K.J.ABRAHAM, KALLUVILA VEEDU,
KOTTAKKAKOM, VITHURA,
NEDUMANGAD.

BY ADVS.SRI.P.A.AHAMMED
SRI.THOUFEEK AHAMED

RESPONDENTS:

VITHURA HOUSING CO-OPERATIVE SOCIETY
REPRESENTED BY ITS SECRETARY, VITHURA,
NEDUMANGAD 695 047.

ADDL. R2 IMPLEADED

THE ARBITRATOR CUM SPECIAL SALE OFFICER,
KERALA STATE CO-OPERATIVE HOUSING FEDERATION,
REGIONAL OFFICE, THIRUVANANTHAPURAM - 35.

Impleaded as per order dated 09.10.2015 in IA 14570/15.

R1 BY ADVS. SRI.P.SUBAIR KUNJU
SRI.N.ANAND
ADDL. R2 BY GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 22764 of 2015 (U)

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE AWARD IN ARC NO. 1759/12 DATED 12/11/14 OF THE ARBNITRATOR, KERALA STATE CO-OPERATIVE HOUSING FEDERATION, THIRUVANANTHAPRUAM

EXT.P1(a): TRUE COPY OF ENGLISH TRANSLATION OF EXT. P1

EXT.P2: TRUE COPY OF THE RECEIPT NO.4621 DATED 12/11/14

EXT.P2(a): TRUE COPY OF ENGLISH TRANSLATION OF EXT. P2

EXT.P3: TRUE COPY OF RECEIPT NO. 4627 DATED 13.11.14

EXT.P3(a): TRUE COPY OF ENGLISH TRANSLATION OF EXT. P3

EXT.P4: TRUE COPY OF REVISION PETITION NO.11/15 FILED BY PETITIONER BEFORE THE CO-OPERATIVE TRIBUNAL, TRIVANANDRUM DATED 10/2/15

EXT.P5: TRUE COPY OF THE ORDER IN RP.NO.11/15 DATED 27/5/15 OF THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM

EXT.P6: TRUE COPY OF NOTICEN.EP/280/15 DATED 8/7/15 TO THE PETITIONER

EXT.P6(a): TRUE COPY OF ENGLISH TRANSLATION OF EXT. P6

EXT. P7: TRUE COPY OF THE NOTICE E.P.NO.280/2015 DATED 4.8.2015

EXT. P7(a): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P7

EXT. P8: TRUE COPY OF PETITION FILED BY THE PETITIONER BEFORE ARBITRATION CUM SALES OFFICER DATED 10.8.2015

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.22764 of 2015 U

Dated this the 16th day of October, 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 second respondent Society, assailed P7 notice directing him to payment of ₹ 8, 20,116/- .

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 him the outstanding loan amount in instalments, pleads the learned counsel.

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 Bank to agree for instalments.

5. Be that as it may, 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 Society, to his credit, evidently on instructions, has submitted that the respondent Society is willing to collect the outstanding loan amount in four 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, after deducting the amount already paid in the light of the interim order dated 17.08.2015, in four equal monthly instalments starting from 01.11.2015. 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.

Dama Seshadri Naidu, Judge

tkv