IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 32279 of 2011 (H)

PETITIONER(S):

P.P.VISWANATHAN, HOUSE NO.5,
MANIKKOTH NAGAR HOUSING COLONY, P.O.PALLIKKUNNU
KANNUR-670 004.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

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1. CHIRAKKAL SERVICE CO-OPERATIVE BANK LTD.
REPRESENTED BY ITS SECRETARY, CHIRAKKAL SERVICE
CO-OPERATIVE BANK LTD, CHIRAKKAL P.O., KANNUR
PIN-670 011.

2. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, DEPARTMENT OF CO-OPERATION
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPRUAM-695 001.

RR1 BY ADV. SRI.P.U.SHAILAJAN
R2-R3 BY ADV. GOVERNMENT PLEADER SRI.GIKKU JACOB.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C) No.32279 OF 2011

PETITIONER(S) EXHIBITS

EXHIBIT P1	:	TRUE COPY OF THE TITLE DEED BEARING NO.1379/1997
EXHIBIT P2	:	TRUE COPY OF THE REPRESENTATION DATED 28.11.2011 TOGETHER WITH POSTAL RECEIPT.
EXHIBIT P3	:	TRUE COPY OF THE JUDGMENT DATED 18.10.2011 IN W.P.(C) NO.15977 OF 2011.
EXHIBIT P4	:	TRUE COPY OF THE RECEIPT DATED 11.1.2012
EXHIBIT P5	:	TRUE COPY OF THE FIXED DEPOSIT RECEIPT DATED 11.4.2012.
EXHIBIT P6	:	TRUE COPY OF THE JUDGMENT DATED 24.2.2011 IN W.P.(C) NO.25485/2010
EXHIBIT P7	:	TRUE COPY OF THE JUDGMENT DATED 31.3.2010 IN W.A.NO.182/2010
EXHIBIT P8	:	TRUE COPY OF THE LETTER DATED 29.11.2012 ISSUED BY THE FIRST RESPONDENT BANK.

RESPONDENT(S) EXHIBITS

EXT.R1(a)	TRUE COPY OF THE LOAN LEDGER PAGE.
EXT.R1(b)	TRUE COPY OF THE PUBLICATION IN DESHABHIMANI NEWS PAPER DATED 23.4.2001.
EXT.R1(c)	TRUE COPY OF THE LAND TAX RECEIPT.
EXT.R1(d)	TRUE COPY OF THE SALE CONFIRMATION ORDER DATED 20.10.2001 ISSUED BY THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KANNUR.
EXT.R1(e)	TRUE COPY OF THE CERTIFICATE OF SALE DATED 24.4.2002 ISSUED BY THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KANNUR.

EXT.R1(f)	TRUE COPY OF THE LAWYER NOTICE DATED 27.5.2002 SENT BY PEITTIONER.
EXT.R1(g)	TRUE COPY OF THE COMPLAINT DATED 13.6.2001 FILED BY THE FIRST RESPONDENT BEFORE THE S.I. OF POLICE, VALAPATTANAM POLICE STATION.
EXT.R1(h)	TRUE COPY OF THE NOTICE WITH REGARD TO THE SEMINAR WAS CONDUCTED BY THE FARMERS CLUB.
EXT.R1(i)	TRUE COPY OF THE DECISION TAKEN BY THE BOARD OF DIRECTORS OF THE FIRST RESPONDENT BANK DATED 13.11.2013.
EXT.R1(j)	TRUE COPY OF THE BUILDING PERMIT DATED 23.8.2014 WITH PLAN.

//TRUE COPY//

P.S. TO JUDGE.

V.CHITAMBARESH, J.

W.P (C) No.32279 of 2011

Dated this the 6th day of March, 2015

J U D G M E N T

A Division Bench of this Court in WA.No.182 of 2010 by Ext.P7 judgment deprecated the practice of a Co-operative Bank holding on to the property even after the loanee has cleared the entire debt. This is notwithstanding the fact that the sale was confirmed in favour of the Award holder Bank and much time had elapsed since then. It was observed therein as follows:-

> "2. In our view, the Bank cannot have grievance against the judgment because the learned Single Judge directed reconveyance of property on the defaulter paying the market value. Admittedly Bank is not engaged in real estate business nor is it's intention to retain purchased property on a regular basis. In fact, what is required for the Bank is liquidity which means it should sell the asset at the earliest and recover the amount which is working capital for it's functioning. We do not know why the Bank retained the property for so long. The loan was given to the

defaulter for repayment with an annual interest of 13% and default would lead to penal interest which will be 2%. In other words, 15% interest on accrued debt amount for the balance period will take care of the interest of the Bank. However, since the respondent has not filed appeal against judgment of the learned Single Judge, we feel the Bank is entitled to higher rate of compensatory interest. Considering the escalation of the land value and for the sake of finality on the market value, the determination for which no guideline is issued by this court in the impugned judgment, we allow the Writ Appeal by modifying the judgment as follows. The first respondent is directed to remit Rs.20 lakhs to the appellant-Bank within a period of one month from today. On deposit as above, the sale certificate issued by the Sales Officer in favour of the appellant-Bank will stand cancelled. The Sub Registrar will on production of copy of this judgment and on production of receipt of payment of Rs.20 lakhs by the first respondent, reverse the entries made in regard to the property after sale to the Bank so

> that the property in records are restored to the first respondent."
> (emphasis supplied)

2. The petitioner availed a loan of ₹ 3 lakhs from the first respondent Bank on 17.6.1997 which swelled up to ₹ 5,16,245/- as on 29.5.2001. The valuable property of the petitioner of extent 19 cents with a building thereon was bid in auction by the Award holder Bank on 29.5.2001 for a sum of ₹ 5,25,300/-. The same was in execution of the Award in ARC.No.2720/1999-2000 obtained by the first respondent Bank against the petitioner. The property is in R.S.No.50/12 of Chirakkal Village in Kannur District having close proximity to the town. The first respondent has not hitherto started any construction activity therein or sold the property to strangers. What then is the inequity on the part of the Bank in reconveying the property to the petitioner on his paying compensatory costs.

3. The writ petition has been filed seeking re-conveyance of the property to the petitioner on such terms and conditions as this Court deem fit. The Bank in its counter affidavit dated 21.2.2012 merely stated

that it is thinking of making use of the property for the development of the Bank or to start a new branch. The specific averment in that regard is extracted hereunder:-

> "In this case, the Bank is also thinking about making use of the said property for the development of the Bank such as to start a new branch or for any other purposes."

The Bank in its additional counter affidavit dated 9.1.2013 stated that it has decided to construct an office building for the 'Farmers Club' in the property and to conduct a nursery garden. The specific averment in that regard is extracted hereunder:-

> "On 13.11.2013 the Director Board of the Bank decided to construct an office building for the Farmers Club in the property claimed by the petitioners herein, and also to conduct a nursery garden in the said property. The true copy of the decision taken by the Board of Directors on 13.11.2013 is produced herewith and marked as Exhibit-R1 (i)."

Ext. R1(i) resolution specifically speaks of this Writ Petition and I agree with the petitioner that the same is intended to thwart the reliefs in this writ petition.

4. The first respondent has not produced its bye-laws along with the counter affidavit. The name of the first respondent Bank itself reveals that it is a credit society. May be the first respondent Bank is advancing loans to farmers to purchase agricultural produce. But to start a Farmers Club and a nursery garden by a credit society appears to be quite unusual. I do feel that the intention of the first respondent Bank is to cling on to the property purchased in auction at whatever cost. Similarly Ext.R1(f) notice issued by the petitioner seeking to know the details of the auction and pass on the surplus amount does not affect the plea for reconveyance put forth.

5. It is trite law that only such of the property as is necessary to satisfy the Award amount need be sold in execution. This wholesome principle of law applies not only to execution sale by Court but also to sale pursuant to Awards in arbitration cases. The Supreme Court has in Ambati Narasayya v. M.Subba Rao and another [AIR 1990 SC 119] has held that there

is an obligation on the part of the authorities to look into this aspect. This is not a discretion but an obligation and the failure to examine this aspect would vitiate the sale. I am conscious of the fact that the petitioner has not filed any application to set aside the sale within time. But this vitiating factor for the sale cannot altogether be lost sight of in moulding the relief.

6. The sale consideration of ₹ 5,25,000/- has already been deposited in the Bank by the petitioner on 11.1.2012. This is by virtue of the interim order dated 16.11.2011 passed in this writ petition. The amount has since been converted into Fixed Deposit as revealed by Ext.P5 receipt. The same would be fetching interest from 11.1.2012 till date. Interest of justice would be met by directing the petitioner to pay interest at 20% per annum on the sum of ₹ 5,25,300/- from the date of sale 29.5.2001 till the date of deposit. The excess amount after giving credit to the interest on the Fixed Deposit shall be made up by the petitioner within a period of two months from today.

7. Ext.R1(e) sale certificate issued in

favour of the Bank will stand set aside on the petitioner depositing the amount as above. Needless to say that the amount covered by the Fixed Deposit is also liable to be credited to the account of the Bank. Criminal case if any registered against the petitioner for having removed the door frames and window frames from the house would however be taken to its logical conclusion. The Sub Registrar will reverse the entries made in the property and restore the same in favour of the petitioner when the exercise is complete.

The Writ Petition is allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

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