

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 34387 of 2014 (W)

PETITIONER:

**JERSON ANTONY, AGED 49 YEARS,
S/O.ANTONY, KADAPLAKKAL HOUSE, MEENACHIL P.O.,
MEENACHIL TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.S.JIJI

RESPONDENTS:

**THE SUB REGISTRAR,
OFFICE OF THE SUB REGISTRAR,
ETTUMANOOR.**

***ADDL.R2 & R3 IMPEADED**

***Addl.R2. THE CHIEF MANAGER,
STATE BANK OF INDIA, THIRUNAKKARA BRANCH,
KOTTAYAM-686 001**

***Addl.R3. THE MANAGER,
H.D.F.C BANK, HDFC HOUSE, P.B NO.1667,
REVIPURAM, M.G ROAD, KOCHI-682 015**

*** ADDITIONAL R2 AND R3 IMPEADED AS PER ORDER DATED 15.01.2015
IN IA.NO.494/2015.**

**R1 BY SR GOVERNMENT PLEADER SRI.JOSEPH GEORGE
ADDL.R2 & ADDL.R3 BY SRI.K.K.CHANDRAN PILLAI, SENIOR ADVOCATE
ADV. SMT.S.AMBILY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 34387 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE POWER OF ATTORNEY DTD 6/3/2006 IN FAVOUR OF THE PETITIONER**
- P2:- TRUE COPY OF THE JUDGMENT IN WPC NO.7243/2010**
- P3:- A COPY OF THE CONTINUATION AGREEMENT DTD 28/9/2013**
- P4:- TRUE COPY OF THE APPLICATION DTD 14/11/2014 SUBMITTED BY THE PETITIONER**
- P5:- TRUE COPY OF THE APPLICATION DTD 15/11/2014 SUBMITTED BY ONE CYRIAC**
- P6:- TRUE COPY OF THE REPLY DTD 29/11/2014 GIVEN BY THE RESPONDENT**
- P7:- TRUE COPY OF THE LETTER ISSUED BY THE ADDITIONAL 3RD RESPONDENT DATED 6/8/2014**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 34387 of 2014

Dated this the 11th day of February, 2015

JUDGMENT

The refusal on the part of the 1st respondent to register the sale deed in favour of the petitioner with reference to Ext.P1 Power of Attorney, for want of photograph of the executor of the 'Power' is the subject matter of consideration in this writ petition.

2. The sequence of events reveals that the petitioner had entered into an agreement with one A.S Sreekumar to purchase the 8 cents of property in block No. 27 in R.Sy.No. 348/2 belonging to him. At that point of time a subsisting Bank Loan was there to be cleared to the additional respondents 2 and 3. By virtue of Ext.P1 Power of Attorney, the petitioner was given the vacant possession of the premises. After execution of the Power of Attorney, the vendor disappeared because of some adverse circumstance involving money transaction. It was thereafter, that the petitioner chose to satisfy entire liability towards the Bank. But the documents were not returned, despite satisfaction of the liability as above. This made the petitioner to approach this Court by filing W.P.(C). No. 7243 of 2010, which

was disposed of as per Ext.P2 judgment dated 13.03.2014. The operative portion of the said judgment reads as follows:

"11. In the above circumstance, the first respondent is directed to return the EMD to the additional respondents 5 and 6 with interest at the same rate at which the financial assistance was rendered to the concerned respondents. It is stated that the EMD deposited by the additional respondents 5 and 6 is to an extent of ₹ 1.80 lakhs, which is to be returned by the first respondent to the additional respondents 5 and 6 with interest at the rate as payable to the loan transaction. The interest so paid by the first respondent shall be added on to the liability of the petitioner. The outstanding arrears to the first respondent shall be cleared by the petitioner within two months from the date of communication as to the balance figure furnishing along with a statement of accounts as to the factual particulars. Similarly, the petitioner shall also satisfy the balance amount, if at all any, to be paid to the second respondent Bank within 'two months' as above. The second respondent shall also furnish a copy of the statement of accounts to the petitioner within 'two weeks' from the date of receipt of a copy of the judgment, which shall show the facts and figures with regard to the loan transaction. On satisfying the requirement as above, the title deeds which are in the custody of respondents 1 and 2 shall be returned to the petitioner herein in view of the undisputed power of attorney executed by the third respondent as borne by Ext.P4 at the earliest, at any rate within one week from the date of satisfaction of the loan amount as above.

3. Pursuant to the above verdict, the original documents which were deposited with the respondent Bank were returned to the petitioner by virtue of undisputed power of attorney. It was observed by this Court that, despite the completion of service of notice to the concerned respondent, they had not turned up to contest the matter, when the proceedings were finalized as per Ext.P2. Since there is valid power of attorney and the proceedings have been acted upon as per Ext.P2, there is no rhyme or reason to refuse the registration of conveyance in favour of a 3rd party, to be effected by the petitioner, insisting to produce the power of attorney bearing the 'photograph' of the executor of the power of attorney, which in fact was executed much before the amendment of the statute in this regard.

4. Heard the learned counsel for the respondent Bank and the the learned Government Pleader as well.

5. The learned counsel for the respondent Bank submits that the entire liability towards the Bank has already been cleared, further adding that, instruction is still to be obtained from the 2nd respondent.

6. The learned counsel for the petitioner submits that the liability towards the 2nd respondent has also been satisfied and

clearance certificate has already been issued by the said Bank dated 11.6.2014, the original of which has been placed for consideration before this Court, which reveals that the housing loan A/c No. 10299514125 in the name of Smt. Anila Sreekumar and Sri. Sreekumar has been settled in full on 10.6.2014 as per Ext.P2 judgment.

7. In the above circumstance, this Court finds that the petitioner is entitled to succeed. There will be a direction to the 1st respondent to register the original of the concerned sale deed as expeditiously as possible, as and when the same is presented subject to satisfaction of all other legal requirements.

The writ petition is disposed of. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE.**