

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 37564 of 2015 (U)

PETITIONER : -

VELAYUDHAN K.V., AGED 54 YEARS,
S/O.VAIRONI, KOOLYATTU HOUSE, KURIDU,
EDATHALA P.O., PANCHAYATH ROAD,
ALUVA- 683 561, ERNAKULAM DISTRICT.

BY ADVS.SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENTS : -

1. ERNAKULAM DISTRICT CO-OPERATIVE BANK,
KAKKANAD, KOCHI - 682 030,
REPRESENTED BY ITS GENERAL MANAGER.
2. DEPUTY REGISTRAR,
ERNAKULAM DISTRICT CO-OPERATIVE BANK,
KAKKANAD, KOCHI - 682 030.
3. SPECIAL SALE OFFICER,
ERNAKULAM DISTRICT CO-OPERATIVE BANK,
KAKKANAD, KOCHI - 682 030.

BY SMT.I.SHEELA DEVI, SC, ERNAKULAM DIST.CO.OP.BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS : -

EXT.P-1 : TRUE COPY OF THE DEMAND NOTICE NO.347/14 DATED 12.8.2015
ALONG WITH ENGLISH TRANSLATION.

EXT.P-2 : TRUE COPY OF THE SALE NOTICE DATED 29.9.2015 ISSUED BY THE
3RD RESPONDENT ALONG WITH ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS: -

EXHIBIT R1(a) : TRUE COPY OF THE LETTER DATED 23.4.2015 THE DRAFT
SCHEME AND THE RESOLUTION TO BE TAKEN IN THE
GENERAL BODY MEETING WITH ENGLISH TRANSLATION.

EXHIBIT R1(b) : TRUE COPY OF THE APPROVAL SCHEME DATED 7.5.2015.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 37564 of 2015

Dated this the 16th day of December, 2015

JUDGMENT

The petitioner, having availed himself of a housing loan for Rs.3,45,000/- in 2008 from the first respondent, committed default in the course of time, constraining the creditor to obtain an award against him. To enforce the award, the creditor Bank intending to bring the petitioner's mortgaged property for sale issued Exhibit P2 sale notice.

2. Contending that the sale notice has not contained the details as have been mandated under Rule 81(e) of the Co-operative Societies Rules, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has submitted that Exhibit P2 sale notice is bereft of many vital details. In elaboration, he has submitted that Exhibit P2 sale notice does not contain the upset price. Nor has it contained any other details as have been mandated under Rule 85 of the Rules. In support of his submissions the learned counsel for the petitioner has placed reliance on **Ram Kishun and Others v.**

State of U.P. And Others.¹

4. The learned counsel for the first respondent Bank has submitted that the respondent Bank is willing to abide by Rules 81 and 85 of the Rules and issue a fresh sale notice or proclamation.

5. Indeed, as can be seen, Rule 81(e) is analogous to Order XXI Rule 66 of Code of Civil Procedure. While interpreting Rule 66 of Order XXI of CPC, the Honourable Supreme Court has held as follows:

“12. Therefore, it becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price. Thus essential ingredients of such sale remain a correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them, as a moneyed person or a big businessman may not like to involve himself in small sales/deals.”

6. It is beyond any pale of controversy that Exhibit P2 sale notice, especially in the face of the statutory mandate and also the judicial dictum laid down by the Apex Court, has not

¹ AIR 2012 SC 2288

conformed to the legal requirements.

7. In the facts and circumstances, this Court sets aside Exhibit P2 sale notice, leaving it open for the first respondent Bank to issue a fresh notice or proclamation in accordance with law.

With the above observations, this writ petition is allowed.
No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-