

(2014) 07 KL CK 0103

In the High Court Of Kerala

Case No : C.M. Appl. No. 175 of 2014 in R.P. No. 454 of 2014 and R.P. No. 454 of 2014 in W.A. No. 248 of 2014

Hydrosekunju

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0103

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : M.V. Thambran, Thara Thambran, R. Reji and B. Bipin, Advocate for the Appellant; C.R. Syam Kumar, Sr. Government Pleader, George Boban, Standing Counsel and A. Antony, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.

C.M. Appl. No. 175 of 2014

1. This is a petition to condone the delay of 45 days in filing the Review Petition.

We heard learned counsel on either side.

In the facts and circumstances of the case, delay will stand condoned.

R.P. No. 454 of 2014

Review Petition itself is taken up for hearing. The Review Petitioner is the appellant in the Writ Appeal. The Writ Appeal was disposed of setting aside the sale that was effected in favour of the fifth respondent subject to certain conditions being fulfilled by the appellant. These conditions are as follows:

1. The sale in favour of the 5th respondent will stand set aside on the following conditions being fulfilled by the appellant:

i) The appellant shall pay an amount of 19,44,454/- under OTS Scheme before 30.6.2014, that will be accepted by the 2nd respondent in full and final

settlement of the liabilities of the appellant.

ii) The appellant shall pay 12% interest on a sum of 15,65,000/- from 22.1.2013 till date of payment. The appellant is given time till 30.6.2014 to deposit the said amount before the fourth respondent for payment to the 5th respondent.

iii) A sum of 1,90,250/- will also be deposited by the appellant for payment to the 5th respondent on or before 30.6.2014. (This represents the sum of 78,250/- already ordered to be paid as compensation i.e., 5% of the purchase money, and 1,20,000/-, which is to be paid by the appellant towards the stamp duty and registration fee to the 5th respondent).

iv) The appellant is also to pay a sum of 19,000/- towards the collection charges to the Tahsildar on or before 30.6.2014. If the entire amounts are deposited by the appellant as aforesaid, the 5th respondent can withdraw the amount of 15,65,000/- from either the fourth respondent or the Housing Board. This is in view of the submission made by the learned Government Pleader that a sum of 15,65,000/- may have been made over to the Housing Board.

2. In the Review Petition, the contention urged is essentially with regard to condition No. 2, which mandates that the appellant shall pay 12% interest on a sum of 15,65,000/- from 22.1.2013 till date of payment. It is the contention of the review petitioner that he had approached the court with a Writ Petition and obtained an interim order of stay of further proceedings on 2.1.2013 and it was when the said stay order was in operation, the fifth respondent had actually paid the amount of 15,65,000/- to the Tahsildar in revenue recovery proceedings initiated by them. According to the Review Petitioner, this payment ought not to have been made when the stay order was in operation, and hence, directing the review petitioner to pay 12% interest on the said sum which was erroneously paid on 22.1.2013, was uncalled for.

3. We have considered the submissions on behalf of the review petitioner. In this case, we must firstly note that the review petition itself has been preferred by another counsel and not the same counsel who appeared in the Writ Appeal. As already observed by the Hon"ble Supreme Court, on many occasions, this practice has to be deprecated. The observations by the Supreme Court were made after noticing that counsel who appear in review petitions, if not the same as counsel who appeared in the original proceedings, would often not be apprised of what transpired in the court at the time of disposal of the original proceedings. No doubt, counsel for the review petitioner would point out that the factual circumstance that arose in one of the cases before the Supreme Court was entirely different and it involved a case where a review petition had been filed by new counsel without notice to the counsel who had earlier appeared in the matter and further, the case related to a clarification petition that was filed in review petitions that were already disposed.

4. We would think that the observations of the Supreme Court in the various judgments have to be considered in the light of the practice that was deprecated

and not on the facts of each case. If fresh counsel are engaged in review petitions where clarity is required in respect of what transpired in the original proceedings, it would be more conducive to the administration of justice if the same counsel appears when the review petition is filed.

5. It is also to be noted that while arguing the Writ Appeal, counsel who appeared for the appellant at that stage had specifically argued the very same contention with regard to the propriety of the fifth respondent making payment of the sum of 15,65,000/- at a time when stay order dated 2.1.2013 was in operation. It was after considering the said submissions made on behalf of the appellant and more as a compromise formula that the writ appeal was eventually disposed of by setting aside the sale which had already taken place in favour of the fifth respondent, subject to the conditions enumerated thereafter. We feel that since the Writ Appeal was disposed of on the basis of a compromise subject to certain conditions that were agreed to by the appellant, it will not be open to the appellant to now renege on any one of the conditions by seeking modification of that condition, to the exclusion of all others, through a review petition. We see no merit in the review petition and the same is accordingly dismissed.