(2009) 12 KL CK 0086

In the High Court Of Kerala

Case No : WA. No. 2340 of 2009

Markose V. APPELLANT

Vs

The Authorised Officer, The Kottayam District Co-operative Bank, Shabu Mathew and Jacob P.J. RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Citation : (2009) 12 KL CK 0086

Hon'ble Judges : S.R. Bannurmath, J;A.K. Basheer, J

Bench : Division Bench

Advocate : John Joseph Vettikad, for the Appellant; T.A. Shaji, SC, for the Respondent

Final Decision : Allowed

Judgement

A.K. Basheer, J.—This appeal is directed against the judgment in WP(C) No. 20412/09. By the impugned judgment the learned Single Judge held that the appellant was guilty of suppression of material facts and therefore he was not entitled to get any relief in the Writ petition.

2. The sole prayer in the Writ petition was to issue a writ of certiorari to quash Ext. P3 communication informing the appellant and his co-obligant that the property which was mortgaged to secure a loan advanced by them had been sold for a sum of Rs. 5,50,000/-. The appellant and his co-obligant were therefore directed to give vacant possession of the said property.

3. We have heard learned Counsel for the appellant and learned Standing Counsel for the Bank. We have also heard the learned Counsel for the auction purchaser who is additional respondent No. 3 in the Writ Appeal.

4. Having heard learned Counsel for the parties and having perused the materials available on record, we do not deem it necessary to deal with the various contentions raised by the appellant and his co-obligant before the learned Single Judge. Suffice it to say that the appellant and his co-obligant had

committed default in repayment of the loan and therefore the learned Single Judge was justified in dismissing the Writ Petition. However, without going into those aspects we are of the view that on yet another ground the appellant is entitled to get some relief in this Writ Appeal.

5. It is the admitted position that a parcel of land having an extent of 19.42 Ares was mortgaged by the appellant and his co-obligant while availing the loan from the Bank. This property was sold in a public auction held on March 28, 2009 for a sum of Rs. 5,50,000/-. As mentioned earlier, respondent No. 3 was the successful auction purchaser. He had deposited 25% of the sale price on the date of sale. The balance sum was deposited by him on May 4, 2009, on which day the sale was confirmed.

6. It is vehemently contended by the auction purchaser that there is no justification in granting any relief to the appellant at this stage. He points out that the auction purchaser had mobilised the necessary funds by borrowing and selling gold ornaments of his wife. He further contends that the real owner of the property is not before this Court and his co-brother is fighting the cause for him.

7. We are afraid, the above contentions are totally misconceived and untenable. It is true that the sale was confirmed by the Bank on May 4, 2009 on which date the auction purchaser had remitted the entire balance payable by him. But certainly and admittedly, the auction purchaser was never put in possession of the property. The appellant and the co-obligant had continued to be in possession. They are now ready to pay off the liability. More importantly they are also prepared to pay adequate compensation to the auction purchaser. In that view of the matter, the contention now raised by the auction purchaser that the sale is not liable to be set aside just because the appellant has now come forward to wipe off the entire liability, cannot be entertained.

8. In this context, it may be noticed that when the Writ Appeal came up for consideration on November 25, 2009 the learned Counsel for the appellant had submitted that he is prepared to pay off the entire liability with adequate compensation to the auction purchaser. After hearing the parties including the auction purchaser, this Court took the view that if the auction purchaser pays a sum of Rs. 1.75 lakhs as compensation, over and above the sale price, it would meet the ends of justice. We took the above view having regard to the fact that a very valuable property having an extent of 19.42 Ares was sold for a low price of Rs. 5.50 lakhs. The learned Counsel for the appellant had agreed to remit the said sum of Rs. 7.25 lakhs (Rs. 5.50 lakhs + 1.75 lakhs) in the Bank to be paid to the auction purchaser.

9. The appellant has thereafter deposited a sum of Rs. 3,30,000/- in the Bank on the next day itself, viz November 26, 2009. It is brought to our notice that a sum of Rs. 1,30,684/- is lying to the credit of the appellant after adjusting the amount payable by him towards the loan. It is now submitted before us that the balance payable by the appellant is Rs. 2,65,000/-. The appellant has undertaken

to remit it in the Bank on or before December 5, 2009.

10. Having regard to the entire facts and circumstances, in our view, the above formula worked out will meet the ends of justice. More importantly the auction purchaser will stand adequately compensated in as much as he will get 1.75 lakhs as compensation for the investment made by him in the auction sale held on March 28, 2009. Therefore the auction sale is set aside.

11. The appellant shall deposit the balance amount of Rs. 2.65 lakhs on or before December 5, 2009 in which event the Bank shall release the total sum of Rs. 7.25 lakhs to respondent No. 3, the auction purchaser on condition that he shall return the title deeds to the Bank, to be delivered to the appellant. If the appellant fails to make deposit as directed above, this judgment shall stand withdrawn.

In the result, the appeal is allowed in the above terms. However, we make it clear that the appellant and the co-obligant shall be liable to pay Rs. 5,000/-as cost, as directed by the learned Single Judge.