**(2014) 11 KL CK 0214**

**In the High Court Of Kerala**

**Case No :** Writ Petition (Civil) No. 19934 of 2012 (N)

Mohanan T.M. APPELLANT

Vs

State of Kerala RESPONDENT

**Date of Decision :** 13-11-2014

**Acts Referred:**

Kerala Co-operative Societies Act, 1969 — Section 83, 87

**Citation :** (2014) 11 KL CK 0214

**Hon'ble Judges :** K. Vinod Chandran, J

**Bench :** Single Bench

**Advocate :** M.N. Mathew, Advocate for the Appellant; T.J. Michael, Govt. Pleader, C.A. Majeed, SC, Athew Kuriakose and P.V. Chandra Mohan, Advocate for the Respondent

## Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved by the sale proceedings initiated against the property for recovery of debt due to the respondent Bank and concluded with sale in public auction to the 4th respondent. Admittedly, a loan of Rs. 45,000/- was availed in the year 1999 and gross default was committed in the repayment. The Bank approached the Joint Registrar of Co-operative Societies with an Arbitration Case in which notice was issued to the defendants being the petitioner herein and his wife. The Award was passed as per Ext. P2. Though Ext. P2 is an ex parte Award, it is seen that the petitioner had entered appearance there and later on, kept away from the proceedings. The wife of the petitioner did not at all appear before the Arbitrator. There is no contention that notice/summons was not received. It was only in such circumstances that, Ext. P2 Award was passed ex parte on 31.07.2002.

2. The respondent Bank contends that after the Award, many a time notice was issued to the petitioner for payment of the arrears due in the account and which dues had been adjudicated by Ext. P2 Award. Since nothing was paid; in the year 2004, the Bank initiated Execution Proceedings as E.P. 527 of 2004. The petitioner again was issued notice in the Execution Proceedings but he chose not

to appear. Subsequently, the Execution Petition filed in the year 2004 culminated in the sale proceedings of the year 2008. The additional 4th respondent was the purchaser of the property. The property was bid for a price of Rs. 5,01,000/- and conveyed to the 4th respondent by Ext. R2(a) deed dated 14.05.2010. After adjusting the loan amounts due in the account, the petitioner received back an amount of Rs. 3,88,932/- on 3.09.2010 even as per the petitioner''s own admission in Ext. P3; but under protest.

3. The learned counsel for the petitioner primarily contends that, the petitioner is an illiterate and 19 cents of property was sold in satisfaction of a debt, the principal amount of which was Rs. 45,000/- The petitioner raises a contention that the Award and the sale were ex parte and the petitioner was not heard before either of the proceedings were concluded. The petitioner also contends that he has challenged the sale of the entire properties and had filed Ext. P3 objection on 20.11.2008 before the Sale Officer, for sale of a portion of the property. The Sale Officer is not a party in the above writ petition; and the contention that such objection was filed and not considered by the authority; cannot be verified. It is also borne out from records that the sale is only of the mortgaged properties; i.e., 15 cents.

4. Primarily it is to be noticed that the loan was of the year 1999 and when the Award was passed as Ext. P1, an amount of Rs. 55,377/- was liable to be recovered with 17% interest on the principal amount of Rs. 43,377/-. The petitioner, though was served with notice and initially appeared before the Arbitrator, chose to keep away from the proceedings. Later on, in the Execution Proceedings also, very same action or rather omission was repeated. Despite the alleged filing of an objection, produced as Ext. P3, the petitioner does not have a case that he had urged it before the Sale Officer. When the matter came up for sale, he allegedly filed an objection and again kept away from the proceedings. In any event, sale itself happened on 14.05.2010 and the present writ petition was filed in the year 2012.

5. The petitioner''s contention is that, he had filed a revision from the Award in the year 2011 before the Co-operative Tribunal, and the Purchaser, the 4th respondent herein, having been removed from the proceedings before the Cooperative Tribunal, the petitioner on that cause of action, approached this Court with the above writ petition. The said order of the Tribunal also is seen challenged in the writ petition.

6. It is to be noticed that the relief claimed is for setting aside the sale and for reconveyance of the property and even now the petitioner''s counsel prays for some time to settle the entire amounts, ie., after having accepted the balance amount of Rs. 3,88,923/-. It is relevant that such amounts were accepted on 03.09.2010. Despite the petitioner''s assertion that it was under protest, very evidently, petitioner did not take any proceedings to challenge the sale before this Court or as provided under Section 83 or under Section 87 of the Kerala Co-operative Societies Act and the Rules framed thereunder.

7. The petitioner has deliberately and consciously kept away from the Arbitration and Execution proceedings. The sale was conducted on 05/2010 after due notice and the balance of the sale proceeds, after adjusting the dues to the respondent Bank, was received by the petitioner on 03.09.2010; but, under protest. However, other than the alleged protest made, no proceedings were taken to challenge the sale. A grossly delayed proceeding was taken up before the Tribunal in 2011, challenging the Award (Ext. P2) dated 31.07.2002. Even according to the petitioner the question of limitation is pending consideration. It is a moot question whether condonation can be granted, going by the binding precedents of this Court. But that issue has to be considered by the Tribunal and this Court would not speak on that.

8. The fact remains that the sale itself was not challenged. Even the present writ petition was delayed by two years. The delay would definitely go against the exercise of a discretionary power. Further the petitioner does not substantiate any irregularity in sale nor even the Sale Officer is impleaded herein. The documents produced by the 4th respondent; to assert that the purchase in auction was far above the then notified price, also remains uncontroverted by any material to the contrary. The Tribunal''s order is also unassailable, since the remedies pointed out by the Tribunal; are the ones appropriate to challenge the sale. The 4th respondent was found to be not a necessary party in the appeal against the Award, computing the dues of the petitioner.

9. To sum up, this Court does not find any grounds for allowing the prayers made in the writ petition for reason inter alia of the petitioner himself having kept away from the proceedings and is now taking up a contention that he was not heard before the proceedings are concluded. It is also to be noticed that the writ petition is grossly delayed and the petitioner has not availed of the statutory remedies available to him.

The writ petition hence, stands dismissed.