

(2015) 03 KL CK 0064

In the High Court Of Kerala

Case No : Writ Petition(C). No. 32279 of 2011 (H)

P.P. Viswanathan

APPELLANT

Vs

Chirakkal Service Co-Operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 06-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0064

Hon'ble Judges : V. Chitambaresh, J.

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; P.U. Shailajan, Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—A Division Bench of this Court in WA. No. 182 of 2010 by Ext. P7 judgment deprecated the practice of a Co-operative Bank holding on to the property even after the loanee has cleared the entire debt. This is notwithstanding the fact that the sale was confirmed in favour of the Award holder Bank and much time had elapsed since then. It was observed therein as follows:--

"2. In our view, the Bank cannot have grievance against the judgment because the learned Single Judge directed reconveyance of property on the defaulter paying the market value. Admittedly Bank is not engaged in real estate business nor is it's intention to retain purchased property on a regular basis. In fact, what is required for the Bank is liquidity which means it should sell the asset at the earliest and recover the amount which is working capital for it's functioning. We do not know why the Bank retained the property for so long. The loan was given to the defaulter for repayment with an annual interest of 13% and default would lead to penal interest which will be 2%. In other words, 15% interest on accrued debt amount for the balance period will take care of the interest of the Bank. However, since the respondent has not filed appeal against judgment of the learned Single Judge, we feel the Bank is entitled to higher rate of compensatory

interest. Considering the escalation of the land value and for the sake of finality on the market value, the determination for which no guideline is issued by this court in the impugned judgment, we allow the Writ Appeal by modifying the judgment as follows. The first respondent is directed to remit Rs. 20 lakhs to the appellant-Bank within a period of one month from today. On deposit as above, the sale certificate issued by the Sales Officer in favour of the appellant-Bank will stand cancelled. The Sub Registrar will on production of copy of this judgment and on production of receipt of payment of Rs. 20 lakhs by the first respondent, reverse the entries made in regard to the property after sale to the Bank so that the property in records are restored to the first respondent."

(emphasis supplied)

2. The petitioner availed a loan of Rs. 3 lakhs from the first respondent Bank on 17.6.1997 which swelled up to Rs. 5,16,245/- as on 29.5.2001. The valuable property of the petitioner of extent 19 cents with a building thereon was bid in auction by the Award holder Bank on 29.5.2001 for a sum of Rs. 5,25,300/-. The same was in execution of the Award in ARC. No. 2720/1999-2000 obtained by the first respondent Bank against the petitioner. The property is in R.S. No. 50/12 of Chirakkal Village in Kannur District having close proximity to the town. The first respondent has not hitherto started any construction activity therein or sold the property to strangers. What then is the inequity on the part of the Bank in reconvening the property to the petitioner on his paying compensatory costs.

3. The writ petition has been filed seeking re-conveyance of the property to the petitioner on such terms and conditions as this Court deem fit. The Bank in its counter affidavit dated 21.2.2012 merely stated that it is thinking of making use of the property for the development of the Bank or to start a new branch. The specific averment in that regard is extracted hereunder:--

"In this case, the Bank is also thinking about making use of the said property for the development of the Bank such as to start a new branch or for any other purposes." The Bank in its additional counter affidavit dated 9.1.2013 stated that it has decided to construct an office building for the "Farmers Club" in the property and to conduct a nursery garden. The specific averment in that regard is extracted hereunder:--

"On 13.11.2013 the Director Board of the Bank decided to construct an office building for the Farmers Club in the property claimed by the petitioners herein, and also to conduct a nursery garden in the said property. The true copy of the decision taken by the Board of Directors on 13.11.2013 is produced herewith and marked as Exhibit-R1 (i)." Ext. R1(i) resolution specifically speaks of this Writ Petition and I agree with the petitioner that the same is intended to thwart the reliefs in this writ petition.

4. The first respondent has not produced its bye-laws along with the counter affidavit. The name of the first respondent Bank itself reveals that it is a credit society. May be the first respondent Bank is advancing loans to farmers to

purchase agricultural produce. But to start a Farmers Club and a nursery garden by a credit society appears to be quite unusual. I do feel that the intention of the first respondent Bank is to cling on to the property purchased in auction at whatever cost. Similarly Ext. R1(f) notice issued by the petitioner seeking to know the details of the auction and pass on the surplus amount does not affect the plea for reconveyance put forth.

5. It is trite law that only such of the property as is necessary to satisfy the Award amount need be sold in execution. This wholesome principle of law applies not only to execution sale by Court but also to sale pursuant to Awards in arbitration cases. The Supreme Court has in *Ambati Narasayya Vs. M. Subba Rao* and another, has held that there is an obligation on the part of the authorities to look into this aspect. This is not a discretion but an obligation and the failure to examine this aspect would vitiate the sale. I am conscious of the fact that the petitioner has not filed any application to set aside the sale within time. But this vitiating factor for the sale cannot altogether be lost sight of in moulding the relief.

6. The sale consideration of Rs. 5,25,000/- has already been deposited in the Bank by the petitioner on 11.1.2012. This is by virtue of the interim order dated 16.11.2011 passed in this writ petition. The amount has since been converted into Fixed Deposit as revealed by Ext. P5 receipt. The same would be fetching interest from 11.1.2012 till date. Interest of justice would be met by directing the petitioner to pay interest at 20% per annum on the sum of Rs. 5,25,300/- from the date of sale 29.5.2001 till the date of deposit. The excess amount after giving credit to the interest on the Fixed Deposit shall be made up by the petitioner within a period of two months from today.

7. Ext. R1(e) sale certificate issued in favour of the Bank will stand set aside on the petitioner depositing the amount as above. Needless to say that the amount covered by the Fixed Deposit is also liable to be credited to the account of the Bank. Criminal case if any registered against the petitioner for having removed the door frames and window frames from the house would however be taken to its logical conclusion. The Sub Registrar will reverse the entries made in the property and restore the same in favour of the petitioner when the exercise is complete.

The Writ Petition is allowed. No costs.