

K.R. GEORGE

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v

M/S. INDUSTRIAL ENGINEERING CORPORATION AND ORS.

SEPTEMBER 21, 2006

[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

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Decree—Execution of—Compromise as to payment by third party to decree holder in appellate court—In lieu thereof sale of property in favour of the third party—Property developed by the third party—Despite the compromise, judgment debtor filing review petition—Dismissal thereof—In appeal to this Court opportunity given to judgment debtor to deposit the decretal amount—Failure to deposit—Held: In view of the facts of the case impugned orders do not call for interference as the appeal is not bonafide.

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A recovery suit was decreed against the appellant. In execution thereof, the property in question was purchased by the decree holder. An application by appellant for setting aside the court sale, was dismissed by District Court. The order of District Court was challenged in High Court. Appellants-judgment debtors in order to raise the decree debt, procured respondent Nos. 9 and 10. In view of the offer from the respondents and acceptance thereof from the decree holder, compromise was entered into, and setting aside the execution sale, sale of the property in favour of the respondents were directed. Sale certificates were issued in their favour. Later, the appellant filed review petition on the ground that fraud has been practised in the Court in reaching the compromise and set up a third party who expressed his willingness to remit the entire sale consideration before High Court for taking assignment of the property in his favour. The review petition was dismissed by High Court.

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In appeals to this Court on the request of appellant, seeking opportunity to deposit a sum of Rs. 2 crores to show his *bonafide*, this Court in view of the third party showing his willingness to take the property before High Court, directed him to deposit a sum of Rs. 2 crores within a specified time. The third party did not comply with the direction.

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Respondent No. 9 filed an affidavit stating therein that consequent to the order of this Court, the appellant published an advertisement in Newspapers offering sale of the property involved without disclosing his name,

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A and thus the advertisement was an abuse of this Court's order and showed that offer to purchase the land by the said third party was not *bonafide* or genuine.

Dismissing the appeals, the Court

B **HELD:** In view of the events subsequent to the sale of the properties to respondent Nos. 9 and 10, they have taken various steps to obtain the plan approved and also taken steps for construction of the building, etc., there is absolutely no *bonafide* on the part of the appellant in approaching this Court. [465-D-E]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4226 of 2006.

From the Judgment and Final Order dated 12.3.2004 of the High Court of Kerala at Ernakulam in R.P. No. 359/2003.

WITH

D C.A. No. 4227/2006.

K. Sukumaran and N.R. Shonker (for M/s. T.T.K. Deepak & Co.) for the Appellant.

T.L. Vishwanatha Iyer, M.N. Krishnamani, L. Nageshwara Rao, K.V. Mohan, K.R. Nambiar, Fazlin Anam, E.M.S. Anam and Asha Gopalan Nair for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Delay condoned.

F Leave granted in both the special leave petitions.

Civil Appeal No. 4226 of 2006 (@ S.L.P. (C) No. 3177 of 2005) was filed against the final order dated 12.3.2004 passed by the High Court of Kerala in R.P. No. 359 of 2003. Civil Appeal No. 4227 of 2006 (@ S.L.P. (C) No.3178 of 2005) was filed against the final order dated 9.4.2004 passed by the High Court of Kerala in C.M.A. No.63 of 2000.

G We have heard the arguments advanced by Mr. K. Sukumaran, learned Senior counsel for the appellant and the arguments of Mr. T.L.V. Iyer, Mr. M.N. Krishnamani and Mr. L.N. Rao, learned Senior counsel for the respective
H respondents. We have carefully perused the orders passed in C.M.A. No.63/

2000 And also the orders passed in R.P. No. 359/2003 and we have also considered other documents placed on record. A careful perusal of the orders in C.M.A. and the Review Petition, in our opinion, would reveal that both the appeals lack merits and one liable to be dismissed for the reasons recorded in the orders passed in C.M.A. and Review Petition. When the instant matter came up for hearing before us on the last occasion, we passed the order at the request of Mr. K. Sukumaran, learned Senior counsel for the appellant and an opportunity was given to deposit a sum of Rs.2 crores to show the *bonafide* of the appellant. Accordingly, we passed the following orders on 5.9.2006:

Heard learned Senior Counsel appearing on either side at some length.

During the pendency of the review petition before the High Court, an affidavit was filed by one K.V. Bhaskaran, who is not a party to the proceedings, expressing his willingness to remit the entire sale consideration before the High Court for taking assignment of the property in question in his favour. We, therefore, direct the said K.V. Bhaskaran to deposit a sum of Rs.2 crores with the Registrar General of this Court on or before 12th September, 2006 (upto 5 PM), by way of Demand Draft drawn in the name of the Registrar General, Supreme Court of India. This direction is issued to show his *bonafide*. We pass this direction without prejudice to the rights and contentions of the other contesting respondents.

Respondents No. 9 & 10 are permitted to file additional affidavit.

Post the matter on 14th September, 2006 as part-heard.”

When the matter is listed today for further hearing, the learned Senior Counsel for the appellant submitted that even though time was granted to deposit Rs.2 crores, Mr. K.V. Bhaskaran has not complied with the direction and has not deposited the sum of Rs.2 crores as ordered by this Court.

Our attention has also been drawn to the additional affidavit filed by the respondent no.9, who is the purchaser of the property involved in the case. By the said affidavit, the serious conduct of the appellant herein by abusing the process and order of this Court has been clearly set out. Subsequent to the order dated 5.9.2006 of this Court, an advertisement was published in the leading newspapers “Malayala Manorama” and “Mathrubhoomi” on 9.9.2006, offering to sell the properties involved in the case. The name of the advertiser is not disclosed in the advertisement.

- A Instead two telephone numbers are given, one is of Shri Thomas, Kanichayi House, Chalakudy, the brother-in-law of the appellant herein. Apparently, the advertisements are at the instance of the appellant Mr. K.R. George and for the purpose of raising Rs.2 crores for deposit before this Court. When contacted over the telephone by the respondent no.9, the advertiser informed that the sale price of Rs.5 crores is negotiable and out of which Rs.2 crores are to be deposited in this Court and that this Court will directly convey title to the purchaser. A true copy of the said advertisements has also been filed here and marked as Annexure 'A' (Colly) along with this affidavit. It is, therefore, clear that the offer made by Mr. K.V. Bhaskaran by way of an affidavit filed in the Review Petition, is not *bonafide* or genuine and that he has no financial ability to make the deposit. The advertisement at the instance of the appellant herein offering to sell 9th respondent's land is an abuse of this Court dated 5.9.2006 and is an attempt to defraud intending purchasers.

- Events subsequent to the sale of properties to the respondent No. 9 are also placed on record. Consequent to the issue of sale certificate on 31.5.2004 by the District Court, title deeds were executed in favour of the respondents and possession of the properties were delivered by the Court to the respondents on 28.6.2004. Eversince the respondents are the registered owners, paying land tax and other dues. Mutation also was effected in their favour. On 12.7.2004, respondents sold by registered sale deed no.4064 of 2001, 0.04047 hectares of land and old buildings no.T.C.43/1392 to 1399 therein in Survey No.570 (which is the part of the land in question) to Shri K.V. Sadanandan. The land in Survey No.556 was also sold to him by registered sale deed. On 22.9.2004, these respondents have also sold part of the land in Survey No.121/1 and 122/1 and building nos.1190 and 1189 in ward No. 9 of Ollukara Panchayat to Shri Samthej s/o Shri K.V. Sadanandan by registered sale deed No. 5461 of 2004 of the Sub-Registrars Office Ollukkara. Thereafter, the purchasers are in possession of the respective land and are paying basic tax on land. Subsequently, the respondent No. 9 submitted an application on 31.12.2004 for the development of the land as a housing colony to the Municipal Corporation of Thrissur. A plan was also submitted along with the application. The proposal was approved by various authorities including the Chief Town Planner by order No. C-2/548/05 dated 28.5.2005. The Municipal Corporation has duly granted permission and approved the plan by order No. OLK-4573/2004 dated 15.2.2006. The said permission order has also been produced and marked here as Annexure 'B' to this affidavit. The respondents have also constructed compound walls around the entire area of land. They have filled up and leveled the land, developed and marked and plotted the

land into 80 plots, constructed internal roads, provided drainage facilities, laid pipes and made other facilities. The approved plan is being implemented which provides for a School, Garden, Waling Track, Swimming Pool, Super Market, etc. It is stated that the work is in progress. After the purchase of the land in question, respondents have incurred huge expenditure for the development of the land as per the approved plan. The respondents have also published advertisement for sale of the plots and consequently most of the plots are already allotted to various third parts, agreements were entered into with them and they are making payments of consideration in instalments under the agreements. Sale deeds have already been registered to some of the allottees of plots who have paid the consideration for their plots. True copy of one of the sale deeds dated 26.5.2006 has also been filed and marked as Annexure 'C' to this affidavit. It is registered as No. 2224/1/2006 of the Sub-Registrar's Office, Ollukkara on 26.5.2006.

In view of the events subsequent to the sale of the properties to the respondents, the respondents have taken various steps to obtain the plan approved and also taken steps for construction of the building, etc. The Kerala Municipal Corporation has also received their dues, which were outstanding for a very long time because of long legal battle. For the foregoing reasons, there is absolutely no *bonafide* on the part of the appellant in approaching this Court and challenging the orders passed in Civil Miscellaneous Appeal (C.M.A. No. 63/2000) and in the Review Petition (R.P. No. 359 of 2003). We see no warrant for interference with the orders passed and in view of the subsequent events, as mentioned above, both the civil appeals stand dismissed with no orders as to costs.

K.K.T.

Appeals dismissed.

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