

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

Crl.MC.No. 4033 of 2015 ()

CMP.NO. 5639/2014 OF CHIEF JUDICIAL MAGISTRATE COURT, KALPETTA

PETITIONER :

**BABU K.,AGED 40 YEARS,
S/O.LATE APPU, KARATTUMEETHAL HOUSE,
POOTHIKKAD, POOMALA P.O., SULTHAN BATHERY,
WAYANAD, PIN - 673 592.**

**BY ADVS.SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
(FOR SUB INSPECTOR OF POLICE,
BATHERY POLICE STATION).**
- 2. UNION BANK OF INDIA
SULTHAN BATHERY BRANCH, P.B.NO.23,
MOOZHAYIL SHOPPING COMPLEX, SULTHAN BATHERY-673 592,
REPRESENTED BY ITS MANAGER.**
- 3. K.REETHA,
ADVOCATE, K 2335/95, LAW CHAMBERS,
SIGMA TOWERS, KALPETTA NORTH P.O., PIN - 673 122.**

**R1 BY PUBLIC PROSECUTOR SRI.N.SURESH
R2 BY SRI.A.S.P.KURUP, SC, UBI**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 10-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 4033 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEX.A1 - COPY OF THE TREATMENT RECORDS OF THE PETITIONER

ANNEX.A2 - COPY OF THE LAWYER NOTICE DATED 11.11.2014

**ANNEX.A3 - COPY OF THE NOTICE DATED 19.6.2014 ISSUED BY THE ADVOCATE
COMMISSIONER**

ANNEX.A4 - COPY OF THE POSTAL COVER.

RESPONDENT(S)' ANNEXURES: **NIL**

/TRUE COPY/

P.S.TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No. 4033 of 2015

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Dated this the 10th day of July, 2015

ORDER

The prayers in this Crl.M.C. are as follows:

- "A. Call for the records leading to Annexure A3 and quash the same.
- B. Direct the Chief Judicial Magistrate's Court, Kalpetta to afford an opportunity to the petitioner to be heard in the Section 14 proceedings afresh by quashing all proceedings already taken pursuant to the filing of C.M.P.No. 5639/2014 before the said Court, by the second Respondent."

2. The impugned Anx.3 is the notice of inspection dated 19.6.2014 issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate's Court, Kalpetta, on Criminal Miscellaneous Petition No.5639/2014 filed by the respondent Union Bank of India under the provisions of Sec.14 of the SARFAESI Act.

3. Heard Sri.Mohan Jacob George, learned counsel for the petitioner and Sri.A.S.P.Kurup, the learned Standing Counsel for the Union Bank of India appearing for respondents 2 and 3.

4. Sri.Mohan Jacob George, learned counsel for the petitioner submits that the petitioner is suffering from serious

ailments as evident from Anx.A1 series of documents. Further that due to financial difficulties, he is not able to raise any amount immediately, but that sale of a property is expected to be finalised within three months or immediately thereafter. It is further submitted that the total outstanding dues owed by the petitioner to the 2nd respondent bank in regard to the impugned transaction in question as of now come to around Rs.14 lakhs. Further it is submitted that the petitioner will make payment of an amount of Rs.4 lakhs on or before 15th November, 2015 and that the balance amount of the liability will be paid within a period of four months thereafter. It is also pointed out that the bank may be directed to consider the application of one time settlement that may be submitted by the petitioner at the appropriate stage so as to give some relief to the petitioner. Sri.A.S.P.Kurup, the learned Standing Counsel appearing for the Union Bank of India submits that it is for the petitioner to file such appropriate application for one time settlement and in case the petitioner is eligible, the respondent Union Bank of India will consider the same in accordance with their norms.

5. Having heard Sri.Mohan Jacob George, learned counsel

appearing for the petitioner and Sri.A.S.P.Kurup, learned Standing Counsel appearing for the Union Bank of India, it is ordered in the interest of justice that in case the petitioner pays an amount of Rs.4 lakhs on or before 15th November, 2015 and the balance amount of the liability within four months thereafter, then the impugned proceedings shall stand dropped. It is further ordered in the interest of justice that until 15.11.2015, further steps in the impugned proceedings will be kept in abeyance. It is made clear that in case the petitioner does not pay the first instalment amount of Rs.4 lakhs on or before 15.11.2015, then the benefit of this direction to keep in abeyance the impugned proceedings will stand automatically vacated. It is further ordered in the interest of justice that in case the petitioner files appropriate application for one time settlement, after making payment of the first instalment of Rs.4 lakhs on or before 15.11.2015, then the respondent Union Bank of India will consider the same and take a reasonable and sympathetic view in the matter taking into account the serious medical ailments and such other aspects that may be relevant for such consideration. It is made clear that in case the petitioner fails to pay the first instalment of Rs.4 lakhs within the aforesaid time limit of 15.11.2015, then the

Bank will be at liberty to proceed with the impugned proceedings and the direction to keep in abeyance the impugned proceedings will stand automatically vacated.

With these observations and directions, the CrI.M.C. stands finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge