

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

FAO.No. 309 of 2014 ()

(AGAINST ORDER IN I.A.NO.3528/2013 IN IOP NO.15/2013 DATED
29.09.2014 OF THE PRINCIPAL SUB COURT, ERNAKULAM)

APPELLANT(S)/PETITIONERS/PLAINTIFFS.:

1. BABU, AGED 46 YEARS,
S/O.CHOTHI, POOKKOTTIL HOUSE,
NILAMPATHINJAMUGHAL
KUSUMAGIRI P.O., KAKKANAD VILLAGE,
KANAYANANUR TALUK
ERNAKULAM DISTRICT.
2. AMMINI, AGED 43 YEARS,
W/O.BABU, POOKKOTTIL HOUSE,
NILAMPATHINJAMUGHAL
KUSUMAGIRI P.O., KAKKANAD VILLAGE,
KANAYANANUR TALUK
ERNAKULAM DISTRICT.

BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.THOMAS CHAZHUKKARAN
SRI.M.M.VINOD KUMAR
SMT. K.M. RAMYA
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER

RESPONDENT(S)/5TH RESPONDENT/5TH DEFENDANT:

MANAGER,
STATE BANK OF HYDERABAD, VENNALA BRANCH, PALARIVATTOM,
COCHIN-682 025.

BY ADV. SRI.VINOD JABAR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY
HEARD ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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FAO No.309 of 2014
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Dated this the 24th day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Petitioners in an application under Order XXXIII of the Code of Civil Procedure proposed to institute a suit impeaching a transaction, which the plaintiffs are shown to have been entered into with defendant No.1, and also, as a consequence, the lending made by State of Hyderabad by accepting the said property as security. Pending that application under Order XXXIII of the CPC, the petitioners sought an order of temporary injunction restraining eviction. Necessarily, that was seeking an order of restraint against further proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, 'SARFAESI Act', for short.

2. The court below took note of Section 34 of the SARFAESI Act and

dismissed the application for temporary injunction holding that in view of Section 34 of the SARFAESI Act, an order of temporary injunction cannot be granted. However, it preserved the petition under Order XXXIII of the CPC.

3. Having heard the learned counsel for the appellants/petitioners/plaintiffs and the learned counsel for the respondent State Bank of Hyderabad, we are of the view that the court below was justified in taking the view that Section 34 of the SARFAESI Act stands in the way of granting any order of temporary injunction as sought for by the plaintiffs. We say this because the plaintiffs proposed to impeach the transfer that they made in favour of the first defendant. There is no plea that the fifth defendant State Bank of Hyderabad has accepted the security by practicing fraud. The pointed allegation is against the fourth defendant, who is the then Manager of State Bank of Hyderabad. Under such circumstances, without expressing anything on the merits of the application under Order XXXIII of the CPC and also

of the proposed suit in relation to which that original petition is filed, we cannot but sustain the impugned order.

In the result, this appeal is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)

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