

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

OP(C).No. 19 of 2014 (O)

**E.A.251/2011 IN E.P.437/2007 IN OS.27/2006 OF PRINCIPAL SUB COURT,
ERNAKULAM.**

PETITIONER:

**BANK OF BARODA,
PANAMPILLY NAGAR BRANCH, 25/94, PANAMPILLY AVENUE,
PANAMPILLY NAGAR, KOCHI-682036,
REPRESENTED BY SENIOR BRANCH MANAGER, MR.SANTHOSH.**

BY ADV. SRI.BEPIN VIJAYAN

RESPONDENTS:

- 1. SATHYAN, AGED 51 YEARS,
S/O MADHAVAN, AMBALATHINGAL PEDIKAL HOUSE,
VEDAKKUMURIPARAMBIL, PETTA, POONITHURA.P.O,
KOCHI-682317.**
- 2. RAVINDRAN,
S/O.THULASIDHRA RAO, MAPPILAPARAMBIL HOUSE,
MARADU, KOCHI-682304.**

R2 BY ADV. SRI.RAJESH CHERIAN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF LOAN AGREEMENT FOR INDIVIDUALS (HOUSING
LOANS),BANK OF BARODA DATED 28-03-2006
- EXT.P2 TRUE COPY OF LOAN AGREEMENT FOR INDIVIDUALS (HOUSING
LOANS),BANK OF BARODA DATED 17-04-2006.
- EXT.P3 TRUE COPY OF LETTER OF CONFIRMATION OF EQUITABLE
MORTGAGE (IN RESPECT OF PERSONAL PROPERTY) ISSUED BY
BANK OF BARODA DATED 18-04-2006
- EXT.P4 TRUE COPY OF E.P437 OF 2007 IN O.S.727 OF 2006 BEFORE THE
HON'BLE PRINCIPAL SUBORDINATE JUDGES COURT,ERNAKULAM
- EXT.P5 TRUE COPY OF THE ORDER DATED 28-3-2011 IN E.A.251/2011 IN
E.P437 OF 2007 IN O.S.727 OF 2006 PASSED BY THE HON'BLE
PRINCIPAL SUBORDINATE JUDGES COURT,ERNAKULAM.
- EXT.P6 TRUE COPY OF THE PETITION DATED 1-1-2014 FILED BY THE
PETITIONER BEFORE THE HON'BLE CHIEF JUDICIAL MAGISTRATES
COURT,ERNAKULAM.
- EXT.P7 A TRUE COPY OF THE ORDER DATED PASSED BY THE PRINCIPAL
SUBORDINATE JUDGES COURT AT ERNAKULAM IN EP.437/007 IN
OS.727/2006

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

B. KEMAL PASHA, J.

.....
O.P.(C) No.19 of 2014
.....

Dated this the 3rd day of August, 2015

J U D G M E N T

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The property in question was mortgaged to the petitioner/Bank. Without the junction of the petitioner, the 2nd respondent filed a suit seeking a charge decree in respect of the property, as against the first respondent. The proceedings were not known to the Bank. A decree was obtained in the suit and it was put in execution. The property was put to sale. A third party bid in the auction. By then, the petitioner/Bank came to know about it and the Bank approached the execution court with objection against sale.

The auction purchaser, who came to know about the mortgage in favour of the Bank, wanted to withdraw from the auction, and he was permitted to withdraw.

3. In the mean time, the petitioner/Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(*hereinafter referred to as the 'SARFAESI Act'*) and the said proceedings are pending before the Chief Judicial Magistrate's Court, Ernakulam.

4. When again the property was put to sale as is ordered by Ext.P7, the petitioner has approached this Court through the present OP. The present request of the learned counsel for the 2nd respondent is that the petitioner/Bank may be directed to be a party to the execution proceedings through a claim over the property in question, so that the matter can be adjudicated in the execution stage itself.

5. *Per contra*, the learned counsel for the petitioner/Bank submits that in case the 2nd respondent

wants to participate in the SARFAESI proceedings, he can approach the learned Chief Judicial Magistrate, Ernakulam for the said purpose and he can be a party there, so that he could see that better price is obtained for the property in the *SARFAESI* proceedings.

6. On hearing both the parties, this Court is of the view that the said property, which was already mortgaged to the Bank, and on which the Bank has already initiated SARFAESI proceedings, cannot be put to sale in the execution. If so advised, the 2nd respondent can participate in the SARFAESI proceedings pending before the Chief Judicial Magistrate's Court, Ernakulam.

With the said observation, this Original Petition stands allowed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge