

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

OP(Crl.).No. 206 of 2015 (Q)

CMP.NO. 903/2014 OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM

PETITIONER/2ND RESPONDENT:

**SHIBU GEORGE, AGED 47 YEARS, S/O GEORGE,
THAMARACHALIL HOUSE, JANATHA ROAD, VYTTILA,
KOCHI-19**

BY ADV. SRI.P.V.GEORGE(PUTHIYIDAM)

RESPONDENT(S)/STATE & PETITIONER:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM -682 031**
- 2. STATE BANK OF TRAVANCORE,
STRESSED ASSETS RESOLUTION CENTRE, ZONAL OFFICE,
ERNAKULAM, REPRESENTED BY ITS CHIEF MANAGER-682 016**

**R1 BY PUBLIC PROSECUTOR SRI.N.SURESH
R2 BY SRI.SANTHOSH MATHEW,SC
SRI.SATHISH NINAN**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(Crl.).No. 206 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER DT. 3/7/14 PASSED BY THE HON'BLE
CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM IN C.M.P.NO.
903/14

EXT.P2: TRUE COPY OF THE JUDGMENT DT. 27/10/14 PASSED BY THIS
HON'BLE COURT IN OP(CRL). NO. 141/14

EXT.P3: TRUE COPY OF THE COPY SERVED TO THE COUNSEL FOR THE
PETITIONER

EXT.P4: TRUE COPY OF THE JUDGEMENT DT. 10/4/15 PASSED BY THIS
HON'BLE COURT IN WPC NO. 11358/15

EXT.P5: TRUE COPY OF THE PROCEEDINGS DT. 24/6/15 PASSED BY THE CHIEF
JUDICIAL MAGISTRATE COURT, ERNAKULAM IN C.M.P. NO. 903 /14

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

ALEXANDER THOMAS, J.

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O.P(CrI.)No. 206 of 2015

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Dated this the 16th day of July, 2015

J U D G M E N T

The impugned proceedings herein arise out of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"). Without going into the details of the case, it is to be noticed that by Ext.P-4 judgment rendered by this Court on 10.4.2015 in W.P.(C).No.11358/2015, this Court had quashed the impugned Ext.P-3 notice therein and directed the Chief Judicial Magistrate, Ernakulam to pass a fresh order in the matter after considering whether there is a requirement for appointing an Advocate Commissioner to take over possession of the secured assets in the instant case. Further that, for doing so, the learned Magistrate shall consider the sufficiency of the affidavit filed before him, on behalf of the respondent State Bank of Travancore and that the Magistrate shall endeavour to pass orders as directed within three weeks, etc. In purported compliance with the directions issued by this Court in Ext.P4 judgment, the learned Chief Judicial

Magistrate, Ernakulam, has passed impugned Ext.P-5 order rendered on 24.6.2015, which reads as follows:

“Heard. Both counsel present. Additional affidavit filed. Perused records & affidavit. I find that petitioner has complied all the formalities enumerated u/s.14(1) proviso of SARFAESI Act. Therefore, same Commissioner is appointed for taking the possession of secured asset. Counsel for the petitioner submits that fresh Bata may be ordered. Counsel for borrower did not raise objection. Therefore petitioner is directed to pay Rs.3000/- towards Commission Bata. File Commission Report to 31.07.2015.”

It is this order that is under challenge in this Original Petition.

2. Heard Sri.P.V.George Puthiyidam, learned counsel for the petitioner, Sri.Satheesh Nainan, learned Standing Counsel appearing for the 2nd respondent State Bank of Travancore and learned Public Prosecutor appearing for the 1st respondent State of Kerala.

3. On a mere perusal of Ext.P-5 order, this Court is convinced that the said order has been rendered without proper compliance of the specific and precise directions issued by this Court in Ext.P-4 judgment. The learned Magistrate, after due application of mind, should have clearly stated as to how the necessary ingredients in sub clauses (i) to (ix) of Sec.14(1) of the SARFAESI Act have been satisfied by evaluating the same vis-a-vis the averments raised in the affidavit. Without going into the merits of the matter, it is ordered in the interest of justice that the

impugned Ext.P-5 order shall stand quashed on that limited ground and that the matter will stand remitted to the Judicial First Class Magistrate's Court, Ernakulam for passing orders afresh. Both parties concerned will appear before the learned Magistrate on 7.8.2015. The learned Magistrate may, either on that day or on the next nearest date available, hear the learned counsel appearing on either side and pass necessary orders without any further delay, in strict compliance with the directions in Ext.P-4. The learned Magistrate shall deal with the issue as to sufficiency of the averments in the affidavit to fulfil the necessary ingredients in sub clauses (i) to (ix) of Sec.14(1) of the SARFAESI Act. A reasoned order shall be passed by the Magistrate within a week, after hearing both sides. It is made clear that this Court is not going into the merits of the matter in question and that it is solely within the province of the learned Magistrate to decide on the issues as directed above.

With these observations and directions, this O.P(Cr1.) stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

