IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

O.P (DRT).No. 1 of 2015 (O)

AGAINST THE JUDGMENT IN CMP 2288/2014 of CHIEF JUDICIAL MAGISTRATE'S COURT, ERNAKULAM

PETITIONER/APPLICANT :
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SHINIL ABRAHAM, AGED 39 YEARS
S/O.ABRAHAM, PYNATTU HOUSE,
VENMANY, MAMALA P.O.
ERNAKULAM.

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

RESPONDENT/DEFENDANTS :

FEDERAL BANK,
STRESSED ASSET MANAGEMENT CELL
KOTTAYAM.
REPRESENTED BY AUTHORIZED OFFICER - 691 001.

R1 BY ADV. SRI.A.ANTONY
ADV. SMT.LEELAMMA ANTONY

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING BEEN FINALLY HEARD ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

OP (DRT).No. 1 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1:	**TRUE COPY OF THE SALE DEED NUMBER 1360/98 OF S.R.O., PUTHENCRUIZ.**
EXT.P-2:	**TRUE COPY OF THE POSSESSION NOTICE UNDER SECTION 13(4) OF THE SARFAESI ACT DATED 27.12.2013.**
EXT.P-3:	**TRUE COPY OF THE COMMISSION REPORT DATED 28.4.2014 IN I.A.NO.497/14 BEFORE THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM.**
EXT.P-4:	**TRUE COPY OF THE I.A.NO.1520/2014 BEFORE THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM FOR DIRECTION DATED 30.6.2014**
EXT.P-5:	**TRUE COPY OF THE OBJECTION TO EXHIBIT-P4 DATED 8.7.2014 FILED BYTHE RESPONDENT**
EXT.P-6:	**TRUE COPY OF THE ORDER DATED 13.11.2014 IN I.A.NO.1520/2014 OF THEDEBTS RECOVERY TRIBUNAL, ERNAKULAM.**
EXT.P-7:	**TRUE COPY OF THE JUDGEMENT DATED 30.7.2014 IN WPC NO.17371/14 OF THIS HON'BLE COURT.**
EXT.P-8:	**TRUE COPY OF THE ORDER IN I.A.1862/2014 IN S.A.NO.53/2014 DATED 22.8.2014 OF THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM.**
EXT.P-9:	**TRUE COPY OF THE NOTICE DATED 31.12.2014 ISSUED BY ADVOCATE COMMISSIONER.**

RESPONDENT(S)' EXHIBITS **NIL**

/TRUE COPY/

PA TO JUDGE

VS

A.M.SHAFFIQUE, J

O.P.(DRT) No.1 of 2015

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Dated this the 19th day of January, 2015

JUDGMENT

The petitioner has approached this court challenging Ext.P6 and P9. Ext.P6 is an order passed by the Debts Recovery Tribunal in I.A.No.1520/2014. The application was filed by the petitioner seeking a direction to the respondent bank to release title deed Nos.3456/10, 3460/10, 3461/10, on the ground that the respective owners of the property are willing to deposit Rs.1.50 crores directly to the bank. The application was dismissed by the Tribunal, on the ground that the bank is not willing to receive the said amount and release the title deeds of the property.

2. It is not in dispute that the liability due to the bank is more than the aforesaid Rs.1.50 crores. According to the learned Counsel appearing for the respondent bank, the amount will come to about Rs.4.65 crores.

3. Ext.P9 is a notice issued by the Chief Judicial Magistrate Court appointing an Advocate Commissioner to

take possession of the secured immovable property mortgaged to the bank.

4. The main crux of the arguments of the learned Counsel for the petitioner is that, the bank should be called upon to receive 1.5 crores and release the 12 acres of Cardamom plantation against which the bank is not proceeding now. It is also stated that, another 24 acres of land is available as security. That apart another 1.25 acres is available and situated at Ernakulam for the bank to proceed against.

5. As far as the release of mortgaged or secured property is concerned, it is purely within the discretion of the mortgagee/Bank to decide whether the property can be released on receiving part of the dues. The Tribunal in Ext.P6 order had come to the finding as under.

> *"In as much the respondent bank is not coming forward to accept Rs.1.50 crores and release the title deeds sought for in the IA on the context that properties covered under these title deeds are secured as continuing collateral security for total*

17 loans including the six loans availed by the petitioner and the right of redemption of mortgage in respect of the subject properties are available to the petitioners only on discharge of the entire dues under the 17 loans, this Tribunal is not inclined to show any indulgence in the form of a direction to the respondent bank in the said matter."

6. The Learned counsel for the petitioner would however submit that, each loan is separate and the four acres of plantation mortgaged in favour of the petitioner bank are separately mortgaged and no mortgage has been created for the entire loan. This apparently is a question of fact, which cannot be decided by this court in exercise of power under Article 226 of the Constitution of India. The remedy of the petitioner is to prefer an appeal against the Ext.P6 order. Under such circumstances, I do not think that it is necessary for this court to go into the merits of the said contentions.

7. As far as Ext.P9 is concerned, it is an order passed in Section 14(1) of the Securitisation and Reconstuctions of Financial Assets and Enforcement of

Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act'), which cannot be challenged in this proceedings. In the result, there is no necessity to consider the matter on merits.

8. Learned Counsel for the petitioner submits that, the petitioner is ready and willing to settle the entire outstanding amount. If the petitioner is willing to pay the entire amount and discharge the liability it is always open for her to do so. The learned Counsel seeks instalment facility to discharge the liability. Hence I am of the view that, if petitioner is ready to discharge the liability as under Ext.P9 can be kept in abeyance for a short period.

(i) The petitioner shall pay 25% of the outstanding liability within a period of one month from today. The balance amount shall be paid in three equal instalments on 20.3.2015, 20.4.2015 and 20.5.2015. The last instalment shall include the accrued interest.

(ii) If there is default of payment of in any of the instalments, the bank will be entitled to proceed further.

(iii) This order shall not preclude the petitioner from approaching the bank with any proposal for one time settlement.

Sd/-
A.M.SHAFFIQUE
JUDGE

/TRUE COPY/

PA TO JUDGE

vs