

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

OP (DRT).No. 109 of 2015 (O)

SA. NO.339/2015 OF DEBTS RECOVERY TRIBUNAL, ERNAKULAM.

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PETITIONER(S):

C.K. SIBI, AGED 45 YEARS,
S/O. KRISHNANKUTTY, CHANJAMATTATHIL, 7D,
VIJAYA GLIMPSES, JAWAHAR NAGAR,
KADAVANTHARA, KOCHI-682 020.

BY ADVS.SRI.S.ANANTHAKRISHNAN,
SRI.N.K.SUBRAMANIAN.

RESPONDENT(S):

1. THE AUTHORIZED OFFICER, FEDERAL BANK LTD.,
ERNAKULAM/VYTILLA BRANCH, THAMANAM ROAD,
VYTILLA JUNCTION, COCHIN-682 019.
2. FEDERAL BANK LTD., ERNAKULAM/VYTILLA BRANCH,
THAMANAM ROAD, VYTILLA JUNCTION, COCHIN-682 019,
REPRESENTED BY ITS CHIEF MANAGER.
3. M/S.VIJAYA HOSPITALITY AND RESORTS LTD.,
37/991, FIRST FLOOR, EMMY SQUARE,
S.A. ROAD, ELAMKULAM, COCHIN-682 020,
REP: BY ITS MANAGING DIRECTOR SRI.AJAY KUMAR.
4. AJAY KUMAR, MANAGING DIRECTOR,
M/S.VIJAYA HOSPITALITY AND RESORTS LTD, 37/991,
FIRST FLOOR, EMMY SQUARE, S.A. ROAD,
ELAMKULAM, COCHIN-682 020.
5. C.K. VIJAYAN, AGED 51 YEARS,
37/595, DEVAKI SADAN, MUTTATHIL LANE,
KADAVANTHRA. P.O, COCHIN-682 020.
6. THE DEBT RECOVERY TRIBUNAL,
HOUSING BOARD BUILDING, PANAMPALLY NAGAR,
ERNAKULAM-682 036, REPRESENTED BY ITS REGISTRAR.

R1 & R2 BY ADVS. SRI.A.ANTONY, SC,
SMT.LEELAMMA ANTONY.

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION
ON 15-12-2015, ALONG WITH OP(DRT) NO.151 OF 2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: TRUE COPY OF THE POSSESSION NOTICE PUBLISHED IN MALAYALA MANORAMMA.
- EXT.P2: TRUE COPY OF THE POSSESSION NOTICE PUBLISHED IN THE NEW INDIAN EXPRESS.
- EXT.P3: TRUE COPY OF THE LETTER DATED 29.06.2015 SUBMITTED BY THE PETITIONER.
- EXT.P.4 TRUE COPY OF THE LETTER DATED 22.08.2015 SUBMITTED BY THE PETITIONER.
- EXT.P.5 TRUE COPY OF THE NOTICE OF SALE PUBLISHED IN MALAYALA MANORAMMA.
- EXT.P.6 TRUE COPY OF THE NOTICE OF SALE PUBLISHED IN THE NEW INDIAN EXPRESS.
- EXT.P.7 TRUE COPY OF THE VALUATION CERTIFICATE.
- EXT.P.8 TRUE COPY OF THE S.A.NO.339 OF 2015 PENDING BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM.
- EXT.P.9 TRUE COPY OF I.A.NO.2240 OF 2015 PENDING BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM.
- EXT.P.10 TRUE COPY OF THE APPLICATION TO HEAR THE PRELIMINARY ISSUE PENDING BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM.
- EXT.P11: TRUE COPY OF THE COUNTER IN I.A.NO.2240 OF 2015 OF RESPONDENTS 1 AND 2 FILED BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM.
- EXT.P.12 TRUE COPY OF THE NOTICE OF SALE ISSUED BY THE 1ST RESPONDENT.
- EXT.P13: TRUE COPY OF THE SALE NOTICE DATED 11/11/2015.
- EXT.P14: COPY OF THE S.A. NO.470/2015 PENDING BEFORE THE 6TH RESPONDENT WITHOUT ANNEXURES.
- EXT.P15: TRUE COPY OF THE I.A. NO.3116/2015 PENDING BEFORE THE 6TH RESPONDENT.
- EXT.P16: TRUE COPY OF THE LETTER DATED 04/12/2015 SUBMITTED BY PETITIONER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

rs.

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

OP(DRT) Nos. 109 & 151 of 2015

Dated this the 15th day of December 2015

JUDGMENT

Since the issues involved in these OP(DRT)s are the same, they are taken up for consideration together and disposed by this common judgment.

2. The petitioner in both the OP(DRT)s, is a person who claims to be the first director and promoter of a company, by name Vijaya Hospitality and Resorts Ltd. In the aforementioned original petitions, he is aggrieved by the steps initiated by the respondent bank for recovery of defaulted loan amounts, that were advanced to the aforesaid company. In OP(DRT) 109/2015, what was initially impugned was Exts. P5, P6 and P12 sale notices, which were also the subject matter of challenge in SA 339/2015, that was filed by the petitioner before the Debts Recovery Tribunal, and in which the petitioner preferred Ext.P9 interlocutory application, for a stay of proceedings for taking possession of the property, and also Ext.P11 interlocutory application, for a direction to the respondent bank to confine the sale proceedings to only such items of property as were

required for the purpose of discharging the outstanding loan amounts. During the pendency of the OP(DRT), the sale that was proposed in the sale notice impugned in SA 339/2015, did not materialise, and the respondent bank proceeded to issue a fresh sale notice, which is produced as Ext.P13 along with IA 17947/2015 in the said OP(DRT). It is stated that, challenging the very same sale notice, the petitioner has also preferred SA 407/2015, before the Debts Recovery Tribunal along with Ext.P15 interlocutory application, seeking a stay of further proceedings for sale of the properties. In OP(DRT) 151/2015, the petitioner impugns Ext.P3 sale notice, which seeks to bring to sale properties of another company, namely, M/s.Daphne Hotels and Tourism Pvt. Ltd., which according to the petitioner, belongs to the same management. It is stated that challenging the said sale notice, SA 454/2015 has also been preferred before the Debts Recovery Tribunal and the said application, together with an application for stay of further proceedings, is pending consideration before the Debts Recovery Tribunal. The grievance of the petitioner in the OP(DRT) is essentially that the loan amounts were availed by M/s.Vijaya Hospitality and Resorts Ltd., at a time when the 4th and 5th respondents in OP(DRT)109/2015 were managing the company and, there was a mis-management of the company by the said respondents which resulted in the company defaulting in repayment of the loan

amounts to the respondent bank. The apprehension of the petitioner is essentially that, the inaction on the part of the 4th and 5th respondents in taking effective steps to repay the loan amounts, will eventually result in the company losing its properties to the respondent bank, in the SARFAESI proceedings that have been initiated against the said properties. The petitioner, therefore, seeks to protect the interest of the company, in which he is a shareholder, by ensuring that payments are made to the respondent bank on behalf of the company so that the property of the company can be saved.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent bank.

4. The learned standing counsel for the respondent bank would vehemently oppose any indulgence being shown by this Court in the present OP(DRT) to the petitioners herein, since it is the specific case of the learned counsel that the petitioner in the OP(DRT) does not have the locus standi to maintain the present OP(DRT) and further, the petitioner along with other applicants in the securitisation application filed before the Debts Recovery Tribunal also do not have the locus standi to maintain such applications before the DRT. I have considered the submissions of the learned counsel for the petitioner

and the learned standing counsel for the respondent bank in both these OP(DRT)s.

5. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that the case of the petitioner in both these OP(DRT)s is that, as a shareholder, he is entitled to protect the interests of the company and prevent its properties from being appropriated by the respondent bank for realisation of defaulted loan amounts. It is his specific case that, it is on account of a mis-management of the company by the 4th and 5th respondents in OP (DRT) 109/2015 that the properties of the company are now being subjected to proceedings under the SARFAESI Act at the instance of the respondent bank. I am of the view that the locus standi of the petitioner to raise these contentions must itself be gone into by the Debts Recovery Tribunal, in the proceedings that are pending before it namely, SA 339/2015, SA 470/2015, and SA 454/2015. This is more so because the interest of the respondent bank can only be to realise the defaulted loan amounts from the borrowers. The right of the petitioner, in connection with protecting the interests of the company, would have to be examined in the light of the provisions of the Companies Act as, also the provisions of the SARFAESI Act. I, therefore, dispose these OP(DRT)s by directing the

Debts Recovery Tribunal to examine the maintainability of SA 339/2015, SA 470/2015 and SA 454/2015, and if so found to be maintainable, then to consider and pass orders on the interlocutory applications filed by the applicants in the said SA's on merits. The Debts Recovery Tribunal shall pass orders as directed within a period of one month from the date of receipt of a copy of this judgment after hearing the petitioners as also the respondent bank. The sale scheduled as per Ext.P13 sale notice in OP(DRT) 109/2015 shall stand deferred, pending consideration and passing of orders by the Debts Recovery Tribunal as directed in the judgment. It is made clear that the respondent bank shall be entitled to receive the tenders in connection with the sale proceedings, but the same shall not be opened and the proceedings continued, till the Debts Recovery Tribunal passes orders as directed in this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/