

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 83 of 2009 (I)

PETITIONER:

**P.A.LALAN THARAKAN, 5/68, PARAYIL HOUSE,
ARoor, CHERTHALA, ALAPPUZHA.**

BY ADV. SRI.BABU PAUL.

RESPONDENTS:

- 1. CANARA BANK, R & L SECTION, REGIONAL OFFICE,
II ND FLOOR, SHENOY CHAMBERS,
SHAMUGHAM ROAD, ERNAKULAM, KOCHI-31.**
- 2. CANARA BANK, BAZAR ROAD, POST BOX.NO.125,
MATTANCHERRY, COCHIN-2.**

***ADDITIONAL R3 IMPEADED:**

- *3 REKHA AGARWAL, VIII/547, OPPOSITE T.D. HIGH SCHOOL,
MATTANCHERRY VILLAGE, KOCHI TALUK, KOCHI -2.**

***IS IMPEADED AS ADDL. RESPONDENT AS PER ORDER DATED
20/1/09 IN I.A.594/09.**

R1 & R2 BY SRI.P.GOPINATH MENON, S.C.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: TRUE COPY OF THE SALE NOTICE APPEARED IN THE 'THE NEW INDIAN EXPRESS' DAILY DATED 4/7/2007.
- EXT.P2: TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DATED 6/8/2007.
- EXT.P3: TRUE COPY OF THE LETTER DATED 13/8/2007 BY THE PETITIONER.
- EXT.P4: TRUE COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT DATED 22/9/2007.
- EXT.P5: TRUE COPY OF THE REPLY DATED 31/10/2007 BY THE PETITIONER.
- EXT.P6: TRUE COPY OF THE LETTER DATED 2/1/2008.
- EXT.P7: TRUE COPY OF THE LETTER DATED 21/1/2008.
- EXT.P8: TRUE COPY OF THE LETTER DATED 10/11/2008.
- EXT.P9: TRUE COPY OF THE LETTER DATED 26/11/2008.
- EXT.P10: TRUE COPY OF THE SALE NOTICE APPEARED IN THE INDIAN EXPRESS DAILY DATED 2/12/2008.
- EXT.P11: TRUE COPY OF THE SALE DEED DATED 6/2/2003.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 83 of 2009

Dated this the 14th day of July, 2015

J U D G M E N T

The petitioner was an auction purchaser. Petitioner has approached this Court, pursuant to sale conducted by the Bank, initiating SARFAESI proceedings. Petitioner challenges cancellation of the auction in favour of him.

2. It is submitted by the learned counsel for the Bank that, the petitioner made a request for return of the deposited amount. Accordingly, the Bank returned the amount by demand draft.

3. Thereafter, the Bank auctioned the property in respect of the 3rd respondent. The 3rd respondent was also impleaded in the writ petition.

4. Learned counsel for the Bank further submits that, based on the written request dated 03.12.2007 of the petitioner, the auction was cancelled. It is to be noted that the Bank returned the demand draft on 26.11.2008. This was communicated by Ext.P9. Thereafter, the Bank advertised the sale again on 02.12.2008. The original auction was conducted on

06.08.2007. Petitioner has no case that he has paid the full amount. As per the statutory Rules, the petitioner has to deposit the amount within 15 days. In fact, on account of default of the payment itself, the Bank is entitled to forfeit the amount. Further it is seen from the proceedings that, the Bank has returned the amount to the petitioner based on his request.

5. In such circumstances, I do not find that the action of the Bank suffers from any illegality. The Bank had cancelled the auction on the request of the petitioner.

There is no merit in this writ petition, accordingly, it is dismissed.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.