IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WA.No. 1159 of 2011 ( ) IN WP(C).9863/2011

AGAINST THE ORDER/JUDGMENT IN WP(C) 9863/2011 of HIGH COURT OF KERALA DATED 08-06-2011

APPELLANT/RESPONDENT:

THE STATE BANK OF TRANVANCORE,
ELAPPARA BRANCH, REPRESENTED BY ITS CHIEF MANAGER &
AUTHORISED OFFICER, IDUKKI DISTRICT, PIN-685 501.

BY ADVS.SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENT/PETITIONER:

P.C. JOSEPH, S/O. P.J.CHACKO,
HOUSE NO.1/673, UPPUTHARA GRAMA PANCHAYAT
KARIMPANANPATHALIL, PUTHUKKATTU HOUSE, LONETREE P.O.
UPPUTHARA, IDUKKI-685505.

BY SRI.T.A.UNNIKRISHNAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA NO.1159/11

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE A1: TRUE COPY OF THE APPLICATION FILED UNDER SECTION 14 BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA.

ANNEXURE A2: TRUE COPY OF THE ORDER DATED 29.3.2011 OF THIS HON'BLE COURT IN WPC NO.9863/2011.

//True Copy//

PA to Judge

Rp

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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Writ Appeal No. 1159 of 2011
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Dated this the 11th day of February, 2015

J U D G M E N T

Antony Dominic, J.

This writ appeal is filed by State Bank of Travancore, the sole respondent in WP(C) No.9863/11. The said writ petition was filed by the respondent herein seeking for a direction to the appellant not to proceed against the residential house bearing No.1/673 of Upputhara Grama Panchayat on the strength of Ext.P3, an order obtained by the Bank from the Chief Judicial Magistrate, Thodupuzha under Section 14 of the SARFAESI Act.

2. Before the learned single Judge, the Bank contended that the property proceeded against is a secured asset in respect of a loan availed by the respondent's wife and that following the default that was committed in paying the amounts, proceedings under the Act were initiated and finally pursuant to Ext.P3 order, possession of the property was also taken over by the Advocate Commissioner. However, taking note of the contention of the respondent that the building is one constructed by him and therefore the Bank had no right to proceed against the building in question, learned single

Judge disposed of the writ petition directing that it would be open to the Bank to seek appropriate remedy by invoking Section 14 of the SARFAESI Act. It is this judgment, which is under challenge before us.

3. We heard the learned counsel for the appellant Bank and the learned counsel for the respondent.

4. On facts, we notice that the respondent's wife Smt.Marykutty had made Annexure 1 application to the Bank for housing finance for the purpose of construction of a residential house in 33 cents of land in Sy.No.913 of Upputhara Village in Peermedu Taluk owned by her. Based on the application so made by her, the Bank issued Annexure 2 sanction letter, where loan of ₹2,50,000/- was sanctioned which was repayable in 240 instalments. It also shows that, as security, the aforesaid 33 cents of land in Sy.No.913 was to be mortgaged by deposit of title deeds. Accordingly, Annexure 3 memorandum of term loan agreement for housing loan was executed by the respondent's wife on 16/8/2002. Annexure 4 is the plan of the residential house that was proposed to be constructed. Annexure 5 is the letter dated 13/9/2002 submitted by the respondent's wife

requesting the Bank for disbursement of the last instalment of the loan amount. Annexure 6 is the memorandum of deposit of title deeds and Annexure 7 is the power of attorney that was executed by her in favour of the respondent.

5. Evidently, therefore, 33 cents of land in Sy.No.913 of Upputhara Village owned by her was mortgaged by the respondent's wife and utilizing the loan availed by her from the appellant Bank, the building was constructed in the property in question. When default was committed by the loanee, the mortgaged property and the building therein, being the secured asset, was proceeded against by the Bank and it was the said proceedings which was sought to be resisted by the respondent by relying on Ext.P1, an ownership certificate issued by the Secretary of the Upputhara Grama Panchayat certifying that as per the property tax assessment register for the year 1993 to 2011, the respondent is residing at/the owner of building No.I/673.

6. In our view, Ext.P1 could not have in any manner helped the respondent to establish his title over the building in question for more than one reason. First of all, the certificate itself

does not say that he is the owner of the building in question. Secondly, the certificate does not show that the building mentioned therein is situated in the property mortgaged by the respondent's wife. In such a situation, no reliance can be placed on Ext.P1 to reject the case of the appellant Bank that the property proceeded against by them pursuant to Ext.P3 order obtained by them under Section 14 of the SARFAESI Act was against the secured asset.

7. Even apart from all that, the averments in the writ petition show that though the respondent has claimed to have constructed a building in Sy.No.913 of Upputhara Village, no mention is made about the building which has been constructed by his wife on the basis of the loan availed by her. All these suggest that the building that is situated in Sy.No.913 of Upputhara Village can only be the building that was constructed by his wife, who owns the land, availing the loan from the Bank in question. This is all the more so in view of the fact that the averments made by the appellant Bank in the counter affidavit filed by them in the writ petition were not contradicted by any reply affidavit.

8. Evidently, therefore, as is clear from Ext.R1(b) report of the Advocate Commissioner appointed by Ext.P3 order, the possession of the property was taken in the noon of 29/3/11. It was on 29/3/11, WP(C) No.9863/11 was also moved as today motion by the respondent and obtained interim order that possession shall not be taken, if not already taken. Since, by the time possession was already taken by the Advocate Commissioner, this order was of no use to the respondent. However, it was misusing the said order, according to the Bank, that the respondent trespassed into the building in question and reduced the same into his possession. In such a situation, we do not think that when the Bank has moved IA No.8600/11 for restoring status quo ante as on 29/3/11, the learned single Judge ought not have relegated the Bank again to pursue the remedy under Section 14 and instead ought to have passed consequential orders for enabling the Bank to regain possession of the property without once again moving the Chief Judicial Magistrate under Section 14.

9. In such circumstances, we vacate the judgment of the learned single Judge and dispose of the appeal with the following directions;

1. That despite all the above, we allow the respondent or his wife to repay the entire amount that is due to the Bank in four equal monthly instalments.
2. The first instalment shall be paid on or before 27/2/15 and the subsequent instalments shall be paid on or before 27th of every succeeding month.
3. In case payment is made as above, the Bank will not take any action against the property in question or disturb possession thereof either by the respondent or his wife.
4. In the event, the respondent or his wife commits default in paying any one of the instalments as ordered above, it would be open to the appellant Bank to produce a copy of this judgment before the Chief

Judicial Magistrate, Thodupuzha, who has passed Ext.P3 order under Section 14 of the SARFAESI Act and on production of the judgment, the Magistrate shall, without any further notice, issue appropriate orders appointing a Commissioner, who will take possession of the secured asset in accordance with law and hand over the same to the Bank.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
ALEXANDER THOMAS
JUDGE

Rp

//True Copy//

PA to Judge