

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT.JUSTICE P.VASHA

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WAno. 1479 of 2011

AGAINST THE JUDGMENT IN WP(C) 16458/2011 of HIGH COURT OF KERALA DATED 25-07-2011

APPELLANT/PETITIONER:

JOGY THOMAS, S/O LATE K.O. THOMAS,
KAKKASSERY HOUSE, KAKKASSERY ROAD, POST PAVARATTY
THRISSUR DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENTS:

1. THE SOUTH INDIAN BANK LTD.,
REGIONAL OFFICE, KOZHIKODE , P.BNO.933
CHAKKORATHKULAM, WEST HILL P.O, KOZHIKKODE 675 051
REP. BY ITS MANAGER.
2. THE AUTHORIZED OFFICER,
THE SOUTH INDIAN BANK LTD., REGIONAL OFFICE
KOZHIKKODE, P.B. NO.933, CHAKKORATHKULAM
WEST HILL P.O, KOZHIKKODE 675 051
3. THE MANAGER, SOUTH INDIAN BANK LTD.
PUTHANATHANI BRANCH OFFICE, POST PUTHANATHANI
TIRUR TALUK, MALAPPURAM DISTRICT 676 810
4. M.S.KAKKASSERY AUTOS,
NADUVILANGADI, TIRUR, MALAPPURAM DISTRICT 676 810
REP. BY ITS MANAGING PARTNER, JOLLY KAKKASSERY.
5. JOLLY KAKKASSERY, S/O LATE K.O THOMAS,
MANAGING PARTNER, M.S.KAKKASSERY AUTOS, NEDUVILANGADI
TIRUR, MALAPPURAM DISTRICT 676 810
6. VINCENT T.K. S/O T.P.KURIAPPAN, PARTNER, M.S.KAKKASSERY AUTOS
NADUVILANGADI, TIRUR, MALAPPURAM DISTRICT 676 810
7. JOSEPH AUGUSTINE, S/O E.J.AUGUSTINE,
PARTNER, M.S. KAKKASSERY AUTOS, NADUVILANGADI
TIRUR , MALAPPURAM DISTRICT 676 810

R, BY ADV.SMT.LIZA P.CHERIAN
R, BY ADV.SRI.GEORGE VARGHESE (MANACHIRACKEL)
R BY SRI.GEORGE VARGHESE,SC,SOUTH INDIAN BANK

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

W.A.No.1479 of 2011

Dated this the 27th day of October, 2015

JUDGMENT

Antony Dominic, J.

1. Petitioner in W.P(C).16458/11 is the appellant. Appellant filed the writ petition seeking to impugn a sale conducted under the SARFAESI Act on 23.10.2009 and also seeking a direction to the respondent bank to put the property covered by Ext.P2 for a fresh sale. The writ petition was dismissed by the learned single Judge of this Court taking the view that the remedy available to the appellant is before the Debt Recovery Tribunal in an appeal under section 17 of the SARFAESI Act. It is this judgment which is impugned before us.

2. We heard learned counsel for the appellant and learned counsel appearing for respondents 1 to 3.

3. It is the case of the appellant that though sale as scheduled in Ext.P1 notice was effected on 23.10.2009 and the property was purchased by the 7th respondent,

he did not comply with the terms of the sale and as a result, the sale was not confirmed. His request is that therefore, the bank should take steps for fresh sale of the property.

4.The standing counsel appearing for the bank submitted that the 7th respondent did not remit the sale price in full and therefore, the sale was not confirmed. However, it is stated that the bank has already assigned the secured asset to an asset realisation company.

If, as stated by the bank, the property has not been sold and has been assigned, it necessarily will have to be dealt with in accordance with law. Therefore, leaving it open to the bank to do so, this appeal is disposed of.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge