

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WA.No. 143 of 2015 () IN WP(C).35513/2014

AGAINST THE JUDGMENT IN WP(C) 35513/2014 of HIGH COURT OF KERALA
DATED 20.1.2015

APPELLANT(S)/RESPONDENT :-

ICICI BANK LIMITED, LAND MARK, RACE COURSE CIRCLE
VADODARA HAVING BRANCH OFFICE NEAR STATUE JUNCTION
M.G.ROAD, THIRUVANANTHAPURAM
REPRESENTED BY ITS AUTHORISED SIGNATORY.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA

RESPONDENT(S)/PETITIONERS :-

1. SARADA P., W/O. LATE A.SIVARAMAN, RESIDING AT TC 14/1989
CHENNILODE, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.
2. MASTER ASWIN S.MOORTHY, S/O. NARAYANA MOORTHY
REPRESENTED BY HIS FATHER AND NATURAL GUARDIAN S.NARAYANA MOORTHY,
S/O. LATE A.SIVARAMAN, RESIDING AT TC 14/1989, CHENNILODE
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.
3. S.NARAYANA MOORTHY, S/O. LATE A.SIVARAMAN, RESIDING AT TC 14/1989
CHENNILODE, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.
4. SARASWATHY E.R., W/O. S.NARAYANA MOORTHY, RESIDING AT TC 14/1989
CHENNILODE, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.
5. KUMARI S.N.REVATHY, D/O. NARAYANA MOORTHY
REPRESENTED BY HIS FATHER AND NATURAL GUARDIAN S.NARYANA MOORTHY
S/O. LATE A.SIVARAMAN, RESIDING AT TC 14/1989, CHENNILODE
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 011.

R1-R5 BY ADV. SRI.R.V.SUJIT KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.A. No.143 of 2015

Dated this the 4th day of February 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard the learned counsel for the appellant as well as the learned counsel appearing for the respondents.

2. This writ appeal has been filed against the interim order dated 20.1.2015 passed in W.P.(C) No.35513 of 2014. The respondents had filed the writ petition challenging the proceedings under the SARFAESI Act, 2002. A prayer was made to quash Ext.P7, which was a warrant issued by the Chief Judicial Magistrate, Thiruvananthapuram to take possession under Sec.14 of the SARFAESI Act, 2002.

3. The learned Single Judge passed an interim order on 20.1.2015 directing the respondent, the appellant herein to file a detailed counter affidavit stating clearly whether notice under Sec.13(2) of the SARFAESI Act has been served on the petitioners. The learned Single Judge further directed that "in the mean while the respondent shall put the petitioners back in possession of the secured asset."

4. Learned counsel for the appellant bank aggrieved by the last portion of the order, submits that the bank had already served notice and the possession was taken by taking recourse to Sec.14 of the SARFAESI Act. The learned Single Judge granted time to the bank to produce proof of service of notice and status quo as on that date ought to have been maintained and hence, the direction to put back the petitioners in possession was not required.

5. Learned counsel appearing for the writ petitioners, respondents herein submits that the learned Single Judge, being satisfied that the possession was taken illegally, has directed that the petitioners to be put back in possession. It is submitted that the petitioners have no other place to live. The respondents have also filed a counter affidavit in the writ appeal stating that the address of the 4th respondent shown in the application under Sec.14 of the SARFAESI Act was incorrect. It is also submitted that notice under Sec.13(2) was never served.

6. We have heard the learned counsel appearing for the parties and perused the records.

7. The learned Single Judge himself has granted

time to the bank to file a detailed counter affidavit stating clearly whether notice under Sec.13(2) of the SARFAESI Act has been served on the respondents and since the matter has already been posted to 10.2.2015, there was no occasion to direct that the petitioners were to be put in back possession when the possession was already taken on 24.12.2014.

8. Learned counsel for the appellant bank submits that he has already produced certain documents in the writ appeal along with I.A.No.110 of 2015 and that he will also file a detailed counter affidavit before 10.2.2015 before the learned Single Judge. As the matter has already been posted to 10.2.2015, we are of the view that the learned Single Judge shall consider afresh the stay application of the writ petitioners and pass an order, after considering the detailed counter affidavit being filed by the bank as directed by the learned Single Judge in the order dated 20.1.2015. We, however, are of the view that the last portion of the order is deserved to be deleted and hereby deleted. We make it clear that we are not expressing any final opinion on the merits of the stay application. It is for the learned Single Judge to consider and pass appropriate orders

W.A. No.143 of 2015

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thereon.

With the above observation, this Writ Appeal is disposed of.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

Jvt