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

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WA.No. 311 of 2015 () IN WP(C).25598/2014

AGAINST THE JUDGMENT IN WP(C) 25598/2014 of HIGH COURT OF KERALA
DATED 19.11.2014

APPELLANTS/PETITIONER IN WP::

P.V.ALEYAS, AGED 64 YEARS
S/O.LATE VARKEY, PUTHUKUNNATH PUTHENPURAYIL HOUSE
CHENKARA, BHOOTHATHANKETTU.P.O, ERNAKULAM DISTRICT
PIN-686681.

BY ADVS.SRI.MATHEWS K.UTHUPPACHAN
SRI.TERRY V.JAMES

RESPONDENTS/RESPONDENTS IN WP::
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1. THE FEDERAL BANK LTD,
   KUTTAMPUZHA BRANCH, ERNAKULAM DISTRICT-686691
   REPRESENTED BY ITS BRANCH MANAGER.

2. THE CHIEF MANAGER(LEGAL)AUTHORISED OFFICER,
   UNDER SARFARESI ACT, ZONAL OFFICE, FEDERAL BANK LTD.
   FEDERAL TOWERS, MARINE DRIVE, ERNAKULAM-682031.

3. SHALU.S,
   ADVOCATE COMMISSIONER, SREELAKSHMI, SANTHI LANE
   RAVIPURAM, KOCHI-16.

4. STATE OF KERALA,
   REPRESENTED BY ITS CHIEF SECRETARY
   GOVERNMENT SECRETARIAT, THRIVANANTHAPURAM-695001.

R4 BY SENIOR GOVERNMENT PLEADER C.R. SYAMKUMAR
R1 BY SRI.MOHAN JACOB GEORGE STANDING COUNSEL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JJJ

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

W.A. No. 311 of 2015

Dated this the 20th day of February, 2015

J U D G M E N T

Ashok Bhushan,Ag.C.J.

This Writ Appeal has been filed against the judgment dated 19.11.2014 of the learned Single Judge, by which judgment the Writ Petition filed by the appellant was disposed of. Further reference has been made to the Order dated 17.12.2014 passed on the Review Petition filed by the appellant, which petition was disposed of recalling the benefit given by the judgment dated 19.11.2014.

2. The Writ Petition was filed by the appellant challenging the proceedings initiated by the Bank under the SARFAESI Act, 2002 (hereinafter referred to as 'the Act'). The petitioner had prayed for quashing the notice issued by the Bank under Section 13(2) of the Act as well as Ext.P3,

notice for taking physical possession of the property by the Advocate Commissioner. The learned Single Judge, by judgment dated 19.11.2014, permitted the petitioner to clear the entire liability by way of eight equal monthly instalments. Subsequently, a review was filed where it was contended by the learned counsel that, the appellant has never given up his contention to challenge the proceedings, on the ground that it is an agricultural land exempted by virtue of section 31(i) of the Act. The learned Single Judge disposed of the Review Petition recalling the benefit, i.e., facility of instalments granted to the petitioner. However, the learned Single Judge disposed of the Review Petition leaving the issue open. The question whether the property is agricultural or not, was open to be considered.

3. Learned counsel for the appellant submits that the property being an agricultural land, the respondents could not have proceeded under the Act. The learned Standing

Counsel for the Bank, refuting the submission, contends that according to the ownership certificate filed by the petitioner, 'residential house' is mentioned on the land in dispute. The submission of the learned Standing Counsel for the Bank has been refuted by the appellant and submits that even if a residential house is there on the land, that shall not change the nature and character of the land and still it shall remain as an agricultural land.

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

5. The challenge now sought to be raised before this Court is that proceedings are barred by virtue of section 31 (i) of the Act. The submission of the petitioner/appellant that the land is agricultural is seriously disputed referring to the certificate filed by the appellant. The question as to whether the land in dispute which is mortgaged is agricultural land or not, is an issue which require

adjudication of facts and taking of evidence, which can appropriately be done by a competent forum. The said issue need not be entertained or adjudicated in proceedings under Article 226 of the Constitution of India, especially with reference to SARFAESI proceedings.

6. In the above view of the matter, we are of the view that no error has been committed by the learned Single Judge in disposing of the Review Petition leaving the question open. If so advised, appellant may seek appropriate statutory remedy as provided under the Act by filing an application before the Debt Recovery Tribunal.

7. The learned counsel for the Bank submitted that although notice was issued by the Advocate Commissioner on 11.6.2014, the actual possession of the property has not been taken. In the above view of the matter, for proceeding further, the Bank has to take appropriate steps under section 13(4) of the Act, which may give arise to a cause

of action to the appellant. Subject to the above observation, this Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

//TRUE COPY//

P.A. TO JUDGE

JJJ