

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

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WA.No. 523 of 2015 () IN WP(C).15366/2014  
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AGAINST THE ORDER/JUDGMENT IN WP(C) 15366/2014 of HIGH COURT OF  
KERALA DATED 02-02-2015

APPELLANT(S)/PETITIONERS:  
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1. M.V. SHAJI AGED 40 YEARS  
S/O.LATE VELAYUDHAN, MANATHUPADATH  
PATHADIPALAM SOUTH KALAMASSERRY.

2. KAMALAKSHY AGED 72 YEARS  
W/O.LATE VELAYUDHAN, MANATHUPADATH  
PATHADIPALAM SOUTH KALAMASSERRY.

BY ADV. SRI.B.PRAMOD

RESPONDENT(S)/RESPONDENTS:  
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1. LORD KRISHNA BANK  
A REGISTERED SCHEDULED BANKING COMPANY  
HAVING ITS REGISTERED OFFICE AND ADMINISTRATION AT  
KALOOR AND BRANCHES AT ALUVA  
PIN-683 101.

2. HDFC BANK LTD.  
ALUVA BRANCH, REPRESENTED BY MANAGER.

3. THE DEBT RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP)  
ERNAKULAM REP. BY ITS REGISTRAR.

4. THE RECOVERY OFFICER  
THE DEBT RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP)ERNAKULAM

5. RATHEESH M.N., S/O.NARAYANAN  
MALIYIL, 7, CHIRAYAM  
ALANGAD, ALUVA, ERNAKULAM PIN-683 511.

6. RAMAKRISHNA BODY BUILDERS  
PATHADIPALAM, SOUTH KALAMASSERRY  
CHANGAMPUZHA P.O KOCHI-33.

7. K.R. SAJAN, AGED 42 YEARS  
SOLE PROPRIETOR  
RAMAKRISHNA BODY BUILDERSPATHADIPALAM  
SOUTH KALAMASSERRY, CHANGAMPUZHA P.O KOCHI-33.

R2 BY ADV.SRI.T.RAJESH  
BY ADV.SRI.B.JAYASANKAR  
R5 BY ADV. SRI.PEEYUS A.KOTTAM

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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**W.A.No. 523 of 2015**  
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**Dated this the 5<sup>th</sup> March, 2015**

**JUDGMENT**

**Ashok Bhushan, Ag, CJ.**

Heard learned counsel for the appellants and the learned counsel appearing for the Bank.

2. This Writ Appeal has been filed against the judgment dated 2.2.2015 in W.P(C).No.15366 of 2014 by which judgment the Writ Petition filed by the appellants was dismissed with a direction to keep in abeyance delivery of the property for a period of two weeks. The appellants are guarantors of a loan given by the Bank. The Bank approached the Debt Recovery Tribunal, where decree was passed on 3.3.2000. The decree was put in execution. The appellants and the principal borrower had filed O.P(DRT).No.4444 of 2013, which was dismissed by judgment dated 16.12.2013 with the observation that the petitioners had remedy by way of appeal under Section 30 of the Recovery of the Debts Due to Banks and Financial

Institutions Act, 1993. Learned counsel for the appellants submits that the order in the appeal/application in any manner to be filed under Section 19 is appealable under Section 30. He further submits that against the order of recovery appeal lies to the Debt Recovery Tribunal. Subsequent to the said order, the property was put to auction and sold. The appellants thereafter filed W.P(C). No.15366 of 2014. The learned Single Judge, referring to the earlier judgment of this Court dated 16.12.2013, observed that the remedy of the petitioners is to pursue the appeal. However, the learned Single Judge kept the delivery of possession in abeyance for two weeks.

3. Learned counsel for the appellants in support of the Writ Appeal contended that calculation of interest was wholly incorrect, which can be gone into in the writ proceedings. He submits that the auction purchaser was even offered the amount along with interest.

4. In view of the above facts of the case, we are of the view that all these issues can be gone into in appropriate statutory alternative forum as provided under

the Act. This Court by judgment dated 16.12.2013 has already observed that the petitioners may avail the statutory remedy. With regard to auction of property also, the remedy lies under the Act and we are not inclined to entertain the issues as sought to be raised in the Writ Petition or in this Writ Appeal. We are, thus, of the view that the learned Single Judge did not commit any error in dismissing the Writ Petition. However, in view of the fact that the appeal is being decided today, we further provide that delivery of the property in pursuance of the auction shall be kept in abeyance for a further two weeks to enable the petitioner to seek the alternative remedy.

Subject to the above observation, the Writ Appeal is dismissed.

**ASHOK BHUSHAN  
ACTING CHIEF JUSTICE**

**A.M.SHAFFIQUE  
JUDGE**