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

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WA.No. 596 of 2015 IN RP.811/2014 IN W.P.(C) 11835/2014

AGAINST THE ORDER IN RP 811/2014 of HIGH COURT OF KERALA DATED 17-11-2014
AGAINST THE JUDGMENT IN W.P.(C) NO.11835/2014 OF HIGHT COURT OF KERALA DATED 24.7.2014

APPELLANT/REVIEW PETITIONER/PETITIONER:

DILEEP KUMAR S.U., AGED 37 YEARS,
S/O. K.SREENIVASAN ACHARI, DILEEP BHAVAN,
PADINJATTINKARA, KOTTARAKKARA - 691 506.

BY ADVS.SRI.M.P.KRISHNAN NAIR
SMT.RAJESWARI KRISHNAN

RESPONDENTS/RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA, REP. BY ITS SECRETARY,
   CO-OPERATIVE DEPARTMENT, GOVERNMENT OF KERALA,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE AUTHORISED OFFICER,
   KOLLAM DISTRICT CO-OPERATIVE BANK LTD.
   HEAD OFFICE: CHINNAKKADA, PB NO.130,
   KOLLAM 691 001.

3. THE KOLLAM DISTRICT CO-OPERATIVE BANK LTD.,
   KOTTARAKKARA BRANCH - 691 506.

4. THE BRANCH MANAGER,
   KOLLAM, DISTRICT CO-OPERATIVE BANK LTD.,
   KOTTARAKKARA 691 506.

R1 BY SENIOR GOVERNMENT PLEADER SRI. C.R.SYAMKUMAR
R2-R4 BY ADV. SRI.T.R.HARIKUMAR, SC, KOLLAM DISTRICT COOPERATIVE BANK LTD.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JJJ

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

W.A. No. 596 of 2015

Dated this the 24th day of March, 2015

J U D G M E N T

Ashok Bhushan, Ag.C.J.

Heard the learned counsel appearing for the appellant, the learned Standing Counsel appearing for the Bank and the learned Government Pleader as well.

2. This Writ Appeal has been filed against the judgment dated 24-7-2014, by which judgment the Writ Petition filed by the appellant was dismissed. The appellant filed R.P. No.811/2014, which too was dismissed on 17.11.2014.

3. The appellant, who hereinafter shall be referred to as the writ petitioner, had taken a loan from the Bank by mortgaging his property. Proceedings were initiated under the SARFAESI Act, 2002, against which the petitioner contended before the learned Single Judge that by virtue of Section 60(1)(c) of the Code of Civil Procedure, the petitioner's property cannot be attached. The said contention was negatived by the learned

Single Judge referring to Section 31(g) of the SARFAESI Act, 2002.

4. The learned counsel for the appellant submitted that the petitioner was a labourer and had taken a loan for the purpose of marriage of his sister. Hence, he is fully protected by Section 31(g) of the SARFAESI Act.

Section 31(g) of the SARFAESI Act reads as follows:

> "(g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first provisio to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908)"

Section 31(g) was amended with retrospective effect from 11.11.2004. There is an exclusion clause in sub-clause (g) which reads:

> "excluding the properties specifically charged with the debt recoverable under this Act."

5. The petitioner himself has stated that he has taken loan after mortgaging his property; which statement is made in paragraph 4 of the reply affidavit filed by the petitioner. The

relevant portion of the statement is as follows:

> "I had taken a loan of Rs.5,00,000/- (Rupees five lakhs only) on 21.7.2006 from the Kollam District Co-operative Bank Limited, Kottarakara mortgaging my property having an extent of 6½ cents for doing business and not for the marriage of sister."

He has stated that the said loan was taken for doing business and not for the marriage of his sister.

6. Be that as it may, the property, according to the petitioner, having been mortgaged, the benefit of Section 60(1) of the Code of Civil Procedure is not attracted by the exclusive provision of Section 31(g) of the SARFAESI Act and the mortgaged property can very well be attached by the Bank.

7. The learned counsel for the Bank has submitted that there is no error apparent in the judgment of the learned Single Judge and he further submitted that there has been a scheme of 'One Time Settlement' which is current till 31st March, 2015, but the petitioner, having been informed of the scheme, has not submitted any application for availing the said scheme. The learned

counsel for the appellant submits that he is willing to submit application for 'One Time Settlement' scheme.

8. We are of the view that, the scheme still being current, he may submit appropriate application and it is for the Bank to consider the same, as per the scheme, in accordance with law.

Subject to these observations, this Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

jjj