

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WA.No. 1258 of 2015 IN WP(C).16224/2015

AGAINST THE JUDGMENT IN WP(C) 16224/2015 DATED 03-06-2015

APPELLANTS/2ND AND 1ST RESPONDENTS IN WPC :

1. THE AUTHORISED OFFICER,
CENTRAL BANK OF INDIA, 1ST FLOOR, METRO PALACE,
OPP. ERNAKULAM TOWN RAILWAY STATION,
KOCHI - 682 018.
2. CENTRAL BANK OF INDIA, REPRESENTED BY ITS
BRANCH MANAGER, CHEROOTY ROAD, KOZHIKODE - 673 001.

BY ADVS.SRI.VINOD JABAR
SRI.P.M.GIRIJAVALLABHAN

RESPONDENTS/PETITIONER, 3RD RESPONDENT IN WPC :

1. NOORUDEEN, S/O.MUHAMMED,
PUTHENPARAMBIL HOUSE,
NADACKAL KARA, ERATTUPETTA VILLAGE.
2. P.M. AJMAL, S/O.MUHAMMED,
PARANANIYIL HOUSE, TALAPPALAM KARA,
ERATTUPETTA - 686 121.

R1 BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A.No. 1258 of 2015

Dated this the 18th June, 2015

JUDGMENT

Ashok Bhushan, CJ.

Heard learned counsel for the appellants as well as learned counsel for the first respondent/writ petitioner.

2. This appeal has been filed against the judgment dated 3.6.2015 passed by the learned Single Judge in W.P (C).No.16224 of 2015 filed by the first respondent/writ petitioner. The first respondent/writ petitioner was continuing as a tenant in the premises with regard to which proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 was initiated against the owner of the property and an order has already been obtained by the Bank for possession under the SARFAESI Act from the Court of Chief Judicial

Magistrate. The first respondent's case was that on 27.5.2015 he was evicted from the premises. He approached the learned Single Judge and the learned Single Judge, without going into the merits of the claim of either of the parties, disposed of the Writ Petition permitting the first respondent/petitioner to continue till 24.8.2015 and to hand over the premises unconditionally on or before 24.8.2015. The following are the directions issued by the learned Single Judge:

“1. The petitioner shall give an undertaking to the Bank within three days to the effect that, he will vacate unconditionally the entire building on or before 24.08.2015.

2. The petitioner shall hand over the key of the building to the Bank on or before 24.08.2015.

3. The Bank is at liberty to proceed in accordance with law for the sale of the property.”

3. Learned counsel for the first respondent/writ petitioner submits that the Bank has every right to take possession of the premises from the tenant in view of the SARFAESI proceedings and no error was committed by the Bank in taking possession on 27.5.2015.

4. Learned counsel for the Bank, however, submits that the belongings of the first respondent/writ petitioner are in the premises and the Bank is ready to hand over the same as and when required.

5. We have considered the submissions of learned counsel for the first respondent/writ petitioner and perused the records.

6. The learned Single Judge has exercised its discretion in giving a short time to the petitioner, who had come with the case that his children are studying in Classes X, VII and III and when the petitioner and his wife had gone out of the house with their children on 27.5.2015 for purchasing certain articles, the second respondent came at the residence and affixed the notice in the house.

7. The learned Single Judge in equitable jurisdiction has exercised his discretion. The continuance of the petitioner in the premises has been made subject to the undertaking that he will vacate the premises unconditionally the entire building on or before 24.8.2015.

The Bank has been permitted to proceed with the proceedings under the SARFAESI Act, 2002 for sale of the property. Learned counsel for the Bank has expressed his apprehension that the petitioner may damage the premises, which may diminish the value of the property.

8. We are of the view that it is open for the petitioner to give an undertaking regarding the handing over of the premises in the same condition as on today and on obtaining the said undertaking, further steps shall be taken in pursuance of the judgment of the learned Single Judge.

Subject to above, we are of the view that the learned Single Judge has committed no error in exercising his writ jurisdiction. The Writ Petition is closed.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs18/6/15