

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 2338 of 2012 (N)

PETITIONER:

**THE ELECTRONICS TECHNOLOGY PARKS, KERALA
REP.BY ITS CHIEF EXECUTIVE OFFICER, SRI.GIREESH BABU
TECHNOPARK CAMPUS, THIRUVANANTHAPURAM.**

BY ADV. SMT.K.V.RASHMI, SC, TECHNOPARK

RESPONDENTS:

- 1. THE CANARA BANK
ARM BRANCH, II FLOOR, SHENOY CHAMBERS
SHANMUGHAM ROAD, COCHIN-682031
REPRESENTED BY ITS MANAGER.**
- 2. THE M/S CASE CONSULT (INDIA) PVT LTD
TECHNOPARK CAMPUS, THIRUVANANTHAPURAM-695581.**
- 3. C.C.SOFTWARE SOLUTIONS PVT.LTD,
K.P.VI/560C, INDEEVARAM, MALAKKADU ROAD
KAZHAKUTTOM P.O., THIRUVANANTHAPURAM- 695581.**
- 4. THE CANARA BANK
CONTONMENT BRANCH, M.G.ROAD, THIRUVANANTHAPURAM
REPRESENTED BY ITS AUTHORIZED OFFICER.**

**Addl.5. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, IT DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**

ADDL. R5 IS IMPEADED AS PER ORDER DATED 14/08/2014 IN IA 11067/2014.

**R1,R4 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1,R4 BY ADV. SRI.P.GOPINATH
R1,R4 BY ADV. SRI.K.JOHN MATHAI
R1,R4 BY ADV. SRI.P.BENNY THOMAS
R1,R4 BY ADV. SRI.S.RAMU
R5 BYGOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT-P1. TRUE COPY OF THE LEASE DEED EXECUTED BETWEEN THE PETITIONER AND THE 2ND RESPONDENT DATED 14.01.1995.
- EXHIBIT-P2. TRUE COPY OF THE LEASE DEED EXECUTED BETWEEN THE PETITIONER AS WELL AS THE 2ND RESPONDENT DATED 09.07.2007.
- EXHIBIT-P3. TRUE COPY OF THE SUB-LEASE DEED EXECUTED BETWEEN THE PETITIONER, 2ND RESPONDENT AND THE 3RD RESPONDENT DATED 10.07.2007.
- EXHIBIT-P4. TRUE COPY OF THE CONSENT REQUEST SUBMITTED BY THE 3RD RESPONDENT DATED 11.07.2007 BEFORE THE PETITIONER.
- EXHIBIT-P5. TRUE COPY OF THE CONSENT LETTER DATED 05.06.2008 ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT.
- EXHIBIT-P6. TRUE COPY OF THE LETTER SENT TO THE PETITIONER DATED 23.10.2009 BY THE 4TH RESPONDENT.
- EXHIBIT-P7. TRUE COPY OF THE REPLY SENT BY THE PETITIONER DATED 24.03.2010 TO THE 4TH RESPONDENT.
- EXHIBIT-P8. TRUE COPY OF THE SALE NOTICE DATED 24.12.2011 CAME IN THE NEWS PAPER.
- EXHIBIT-P9. TRUE PHOTOGRAPH SHOWING THE BOARD ERECTED BY THE BANK.
- EXHIBIT-P10. TRUE COPY OF THE DETAILED OBJECTION DATED 04.01.2012 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P11 TRUE COPY OF THE NEWS PAPER NOTIFICATION FOR SALE DATED 21.06.2012 PUBLISHED IN MATHRUBHUMI DAILY
- EXHIBIT P12 TRUE PHOTOCOPY OF THE SALE DEED DATED 4.5.1996

RESPONDENTS' EXHIBITS

- R1(A) TRUE COPY OF THE LOAN AGREEMENT DATED 10.07.2007 AS WELL AS LETTER EVIDENCING DEPOSIT OF TITLE DEEDS
- R1(B) TRUE COPY OF THE PETITIONER'S OBJECTION DATED 06.01.2011
- R1(C) TRUE COPY OF THE ENGLISH VERSION OF THE SALE NOTICE DATED 24.12.2011

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P.(C) No. 2338 of 2012 (N)

Dated this the 3rd day of November, 2015

J U D G M E N T

The petitioner, owner of around 1 acre of property in Survey No.710 of Attipra and Pangappara Villages Thiruvananthapuram Taluk, was aggrieved with the possession taken under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'SARFAESI Act, 2002') by the respondent Bank, as indicated at Exts.P8 and P9.

2. Over the years, when the writ petition was pending before this Court, the contentions have acquired a new colour. In fact, the challenge made to Ext.P8 was on the ground that the petitioner had not made any mortgage of the property and the mortgage, if at all, had been made by the 2nd and 3rd respondents, who were respectively lessee and sub-lessee of the property.

3. The petitioner, the owner of the property, had leased out the same to the 2nd respondent for building I.T. Village, initially for a period of 25 years and then for a period of 99 years. The 2nd respondent had sub-leased the property, as per the terms of the Ext.P3 lease, to the 3rd respondent. Obviously, neither the 3rd respondent nor the 2nd respondent continued with the project, but mortgaged their lease hold rights to the 1st respondent Bank and obtained a loan, after which they have not cared to satisfy the loan nor initiate the project.

4. The Bank, frustrated by their attempts to get the loan satisfied, notified sale of the property by Ext.P8. The petitioner then approached this Court and obtained a stay. The petitioner's contention has to be upheld since Ext.P8 speaks of sale of the mortgaged property; while admittedly the mortgage was only of the lease hold rights.

5. The respondent Bank now submits that they have issued a sale notice as indicated at Ext. R1(c), which, in fact, had intended only sale of the lease hold rights and not the property as such. The respondent Bank also substantiates their contention by production of the sale notice approved by the authorised officer of the Bank under the SARFAESI Act, produced at Ext.R1(c). However, there is some anomaly insofar as the same having not been specified in Ext.P8. In such circumstance, the respondent Bank would be free to proceed with the sale of the lease hold rights, specifying it in the sale notice.

6. The learned counsel for the petitioner submits that, in fact, there is an amount of Rs.5 lakhs-odd due to the petitioner also from the respondents 2 and 3. On sale of the lease hold rights, if the respondent Bank receives any amount in excess of the amounts due to the Bank from respondents 2 and 3, then necessarily the same, to the extent of the petitioner's dues, shall be satisfied.

The writ petition, hence, stands disposed of with the above observation.

Sd/-
K.VINOD CHANDRAN,
JUDGE