IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WA.No. 1337 of 2014 IN WP(C).20592/2014

AGAINST THE JUDGMENT IN WP(C) 20592/2014 DATED 22-08-2014
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APPELLANT/PETITIONER :

SHALEEL KHAN M.S.,
VADAKEKOTTARAM, EAST GATE, VAIKOM-686141.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT/RESPONDENT :

STATE BANK OF TRAVANCORE
VAIKOM BRANCH
REPRESENTED BY ITS CHIEF MANAGER AND AUTHORIZED OFFICER
STATE BANK OF TRAVANCORE, VAIKOM-686141.

R1 BY ADV. SRI.SATHISH NINAN, SC, SBT.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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W.A. No. 1337 OF 2014

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Dated this the 18th day of December, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard learned counsel for the appellant as well as learned counsel appearing for the Bank.

2. This writ appeal has been filed against the judgment dated 22.08.2014 passed by learned Single Judge in W.P.(C) No. 20592 of 2014 by which the learned Single Judge disposed of the writ petition filed by the appellant. The appellant had filed the writ petition challenging the proceedings initiated by the Bank under the SARFAESI Act, 2002. The Bank had filed an application before the lower court for taking possession of the mortgaged assets. Petitioner in the writ petition has prayed for the following reliefs:

> "i. To issue a writ of prohibition restraining the Chief Judicial Magistrate, Kottayam from proceeding with Ext.P3 petition and also restraining the advocate commissioner appointed in the matter from taking physical possession of the property till the petitioner is given an opportunity to sell of item No.1, in Ext.P3 property and clear off the amount due to the respondent.
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> ii. To issue a writ of mandamus directing the respondents to permit the petitioner to clear off the amount

shown in Ext.P6 by allowing him payment by way of installments and by permitting him to sell off the schedule No.1 property in Ext.P3 or by finding out a purchaser for the said property so as to facilitate the payment of the entire due amount as per Ext.P6 to the respondent Bank;

iii. To declare that Schedule 1 and 2 are not required to be taken possession of for satisfying the loan amount due to the respondent bank from the petitioner."

3. Learned Single Judge disposed of the writ petition with directions as given in paragraph 3 of the judgment which reads as under:

"3. Looking at the valuation, as also the proposal put forth, it is deemed fit that the petitioner be permitted to bring forth the purchaser, who has offered to purchase the 19.5 cents of land. It is made clear that such sale shall be done only with the junction of the Bank and only if the amount offered is more than the valuation of the Bank. If such a purchaser is brought for it, within a period of one month, and the sale consideration is also paid within one month, the Bank shall facilitate such sale only on the further condition of the remittance of such consideration towards the loan account. The Bank shall also then, release the said property, and shall permit the petitioner to pay off the balance amounts in ten monthly installemnts, which should start on 22.10.2014 and to be followed up on the 22^{nd} of each of the succeeding months. If the initial deposit is not made, with or without the sale of the 19.5 cents; or any single default is

> committed thereafter, the respondent Bank would be entitled to revive and continue the recovery proceedings against the property. In such circumstance, the petitioner shall surrender the physical possession of the property without demur to the respondent Bank."

4. The petitioner's request was accepted by learned Single Judge and permitted him to bring a purchaser for 19.5 cents of land which is scheduled as item No.2. In the appeal an interim order was also passed by us on 29.09.2014 permitting the Bank to proceed with the sale of 19.5 cents of land, possession of which was to be handed over by the appellant to the Bank within 10 days.

5. When the appeal was taken up today learned counsel for the Bank submits that when the Bank proceeded to sell the 19.5 cents of land, it came to the notice of the Bank that already two suits are pending on the basis of agreement of sale of the property under attachment and the dispute arising out of the suit is already pending in RFA No.845 of 2015. It is submitted that in view of the aforesaid the Bank could not finalise the sale. Learned counsel for the Bank submits that the above

fact was not brought to the notice of the court or to the notice of the Bank. Learned counsel for the appellant submits that the amount which the Bank has now claimed as outstanding is not the correct figure. It is further submitted by learned counsel for the appellant that the appellant may be given time to make the payment.

6. We have considered the submissions of learned counsel for the parties and perused the records.

7. The proceedings initiated under the SARFAESI Act, 2002 and the application filed under Section 14 has to be proceeded with, to come to its logical end, permitting the Bank to sell the property which were the secured assets. On the basis of the indulgence shown by learned Single Judge and this Bench in favour of the appellant, the Bank could not sell 19.5 cents. Hence, we are of the view that with regard to the other item also, the Bank should be permitted to proceed under the SARFAESI Act, 2002 and we are of the view that the Writ Appeal deserves to be dismissed. We make it clear that we have not expressed

anything with regard to the claim made on the property (item No.2) in this judgment and parties are free to get their rights agitated in competent court.

The Writ Appeal is dismissed.

Ashok Bhushan,
Chief Justice.

A.M. Shaffique,
Judge.

ttb/21/12