

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

**WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937**

**WA.No. 2080 of 2015**  
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**AGAINST THE JUDGMENT IN W.P.(C).NO.12391/2015, DATED 20-05-2015**  
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**APPELLANT(S)/PETITIONER :**  
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**VENUKUMAR K., AGED 54 YEARS,  
S/O.KESAVAN NAMBOOTHIRI, 103, RAMYA AGENCY,  
F4 CROSS, 10TH MAIN, NEAR BWSSB WATER TANK,  
JEEVAN BEEMA NAGAR, BANGALORE- 560 075.**

**BY ADVS.SRI.NAIR AJAY KRISHNAN  
SRI.R.T.PRADEEP  
SMT.M.BINDUDAS**

**RESPONDENT(S)/RESPONDENTS :**  
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- 1. ICICI BANK LIMITED, LAND MARK,  
RACE COURSE CIRCLE, VADODARA,  
HAVING ITS BRANCH OFFICE NEAR STATUE, M.G.ROAD,  
THIRUVANANTHAPURAM, REPRESENTED BY ITS  
AUTHORIZED SIGNATORY RAJESH MAHTEW.**
- 2. ABHA THANGOOR VASUDEVAN,  
103, RAMAY AGENCY, F4 CROSS, 10TH MAIN,  
NEAR BWSSB WATER TANK, JEEVAN BEEMA NAGAR,  
BANGALORE- 560 075**

**BY ADV. SRI.LAL K.JOSEPH**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-09-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

**ASHOK BHUSHAN, C.J.**

**&**

**A.M. SHAFFIQUE, J.**

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W.A. No. 2080 of 2015

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Dated this, the 23<sup>rd</sup> day of September, 2015

## **J U D G M E N T**

### **Shaffique, J.**

This appeal is filed by the petitioner in WP(C) No.12391/2015 challenging judgment dated 20/5/2015. Writ petition is filed challenging the proceedings initiated by the 1<sup>st</sup> respondent under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act). According to the petitioner, security interest created is in respect of agricultural property and therefore proceedings under the SARFAESI Act cannot be initiated. In fact, the petitioner had approached the Court at a time when the proceedings were taken by the Bank invoking Section 14 of the SARFAESI Act.

2. Learned Single Judge without going into the merits of the contentions urged granted three months time to the petitioner to enable him to pay off the entire liability and if necessary by

bringing a purchaser. Further proceedings were also stayed for a period of three months. It was mentioned that if the petitioner fails to pay off the entire liability within the three months period, the Bank was entitled to sell the property in accordance with law.

3. Learned counsel for the appellant while impugning the aforesaid judgment submits that the appellant is in dire difficulty to raise the funds for repaying the liability and he was unable to find out a purchaser during the relevant time. It is stated that the property originally was a paddy field which was reclaimed as a garden land and therefore, it comes within the purview of agricultural land and in that view of the matter, Bank was not entitled to proceed against the said property.

4. As far as the contention urged by the appellant is concerned, the 1<sup>st</sup> respondent Bank does not admit the fact that it is an agricultural property as it is clear from the fact that they have proceeded against the property as if it is not an agricultural property. The question whether the security interest involved in the case is agricultural property or not, being a question of fact, can be resolved only by the Tribunal and it is always open for the appellant to approach the Tribunal under Section 17 of the Act.

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This Court cannot adjudicate on such factual disputes.

In the result, we do not think that there is any error in the judgment, which warrants interference at the appellate stage. Accordingly, the writ appeal is dismissed reserving right of the appellant to approach the Tribunal for appropriate orders.

Sd/-

**ASHOK BHUSHAN, CHIEF JUSTICE**

Sd/-

**A.M. SHAFFIQUE, JUDGE**

Rp

23/09/2015

*//True Copy//*

*PS to Judge*