

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 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WA.No. 2370 of 2015 () IN WP(C).31184/2015

AGAINST THE JUDGMENT IN WP(C) 31184/2015 DATED 15-10-2015

APPELLANT(S)/PETITIONER :-

MRS.RANI SEBASTIAN, AGED 44,
W/O.SEBASTIAN, THEKKANATH PALATTY HOUSE, CHUNAGAMVELY
KIZHUMAD, ERUMATHALA P.O, ERNAKULAM DISTRICT.

BY ADV. SRI.P.SHAIJAN JOSEPH

RESPONDENT(S)/RESPONDENTS :-

1. HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED,
RAVIPURAM JUNCTION, M.G.ROAD, KOCHI, PIN - 682 015
REP BY ITS REGIONAL MANAGER
2. HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED
RAVIPURAM JUNCTION, M.G ROAD, KOCHI, PIN - 682 015
REP BY ITS AUTHORISED OFFICER

BY ADV. SRI.K.K.CHANDRAN PILLAI (SR.)
SMT.S.AMBILY
SMT.K.V.SHENU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

WA No.2370 OF 2015

APPENDIX

APPELLANT'S EXHIBITS :-

ANNEXURE A1 :- TRUE COPY OF STATEMENTS OF ACCOUNT DATED 9-10-2015 ISSUED BY RESPONDENTS TO THE APPELLANT.

ANNEXURE A2 :- TRUE COPY OF RECEIPT DATED 2-12-2015 ISSUED BY RESPONDENTS.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

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

W.A. No.2370 of 2015

Dated this the 11th day of December 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard the learned counsel for the appellant as well as the learned counsel appearing for the Finance Corporation.

2. This writ appeal has been filed against the judgment dated 15.10.2015 in W.P.(C) No.31184 of 2015, by which, the learned Single Judge had disposed of the writ petition permitting the petitioner to deposit the overdue amount together with interest in six equal successive monthly instalments commencing from 2.11.2015 along with the original instalment as fixed. It was further directed that after the payment of the aforesaid amount of ₹5,87,925/-, the Finance Corporation shall hand over the secured assets to the petitioner. The respondent Finance Corporation had already taken possession under the SARFAESI Act, 2002.

3. The petitioner has come up in the appeal stating that she and her children had already been dispossessed from their house, which is causing great hardship to her, since the examination of the petitioner's son is to be commenced in December itself and further, the petitioner has also filed an

-: 2 :-

affidavit in this appeal stating that she is ready to deposit ₹75,000/- per month and in any event, if she commits any default in payment of the amount as aforesaid, the said Corporation may take immediate possession of the house and the appellant shall surrender possession of the house. It is further submitted that the proceedings, which were initiated with regard to the housing loan has to be repaid by 2023. It is submitted that the respondent Corporation may be directed to give back the possession of the house to the petitioner since she had already paid an amount of ₹75,000/- on 2.12.2015.

4. Learned counsel appearing for the respondent Corporation opposes the said submission and submits that the learned Single Judge had already granted time to the petitioner to clear the overdue amount and on payment, the Corporation was directed to hand over the possession to the petitioner.

5. Normally, this Court in exercise of writ jurisdiction does not interfere with the proceedings initiated under the SARFAESI Act, 2002. But, however, looking into the facts of the present case, it being a housing loan and it is stated that the only income of the petitioner is the salary of her husband, about ₹90,000/- per month, out of which, the petitioner agrees to pay ₹75,000/- per month, we

-: 3 :-

are of the view that the Corporation can be directed to hand over possession to the petitioner, with the following conditions :-

- (i) The petitioner shall continue to pay ₹75,000/- per month, which payment shall be made on or before 25th of every month starting from 25.1.2016 and thereafter, continue to pay on 25th of each month. .
- (ii) In any event, if the appellant commits any default in making payment of ₹75,000/- by 25th of each month, the possession shall immediately, within three days, be handed over by the petitioner to the Corporation, failing which, the Corporation shall, with the help of the police, take back possession and the Corporation may further proceed from that stage.
- (iii) The affidavit filed by the petitioner be treated as an undertaking given by the petitioner. Paragraph 3 of the said affidavit, which is relevant is quoted as below :-

“I have no other property and house. I am fully depending on my husband's salary to pay loan amount and to meet family expenses. My husband's salary is about ₹90,000/-. I am in a financial crisis since my husband was absent from duty for nine months due to illness. I have to pay the loan arrears and regular EMI of ₹35,600/- from the salary of my husband. I am not in a position to pay more than ₹75,000/- per month including arrears and monthly EMI to respondents. I am unable to remit a lump sum amount at present. I was remitting the EMI on 25th day of every month through ECS and it was arranged from my husband's salary. Hence I

-: 4 :-

hereby undertake that I shall pay ₹75,000/- each including regular EMI on 25th day of every month starting from 25-1-2016 without fail till clearing the over due amount. I further undertake that I shall surrender the house and property in the event of a single default in monthly instalment granted by this Hon'ble Court. I have no other house and at present my family consisting of two unmarried daughters and a son are living at the mercy of relatives. My son's MBA semester examination will start next week and all his study materials are inside the house. So this Hon'ble Court may be pleased to direct the respondents to handover the possession of my house and property to me and allow me and family members to reside in that house. I again undertake that I shall surrender my house and property in the event of a single default in monthly instalment granted by this Hon'ble Court."

- (iv) The Corporation shall hand over the possession to the petitioner within three days from the date of receipt of a copy of this judgment.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE