IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 319 of 2015 (L)

PETITIONER(S) :

P.E.NASSER, AGED 55 YEARS,
S/O.LATE IBRAHIM, PUTHENPURACKAL HOUSE,
PALAMKADAVU ROAD, THALAYOLAPARAMBU, VAIKOM,
KOTTAYAM.

BY ADV. SRI.P.C.HARIDAS

RESPONDENT(S) :

1. **UNION OF INDIA,**
   REPRESENTED BY ITS SECRETARY TO THE DEPARTMENT OF FINANCE,
   GOVERNMENT SECRETARIAT, NEW DELHI- 110 001.

2. **FEDERAL BANK LIMITED,**
   THALAYOLAPARAMBU BRANCH, THALAYOLAPARAMBU, VAIKOM,
   KOTTAYAM, REPRESENTED BY ITS BRANCH MANAGER- 686 141.

3. **THE AUTHORISED OFFICER (UNDER SARFAESI ACT),**
   SENIOR MANAGER, ASSET RECOVERY BRANCH,
   FEDERAL BANK LIMITED, MAR MAKIL CENTENARY BUILDING,
   S.H.MOUNT P.O., KOTTAYAM - 686 006.

4. **FAZIL RAHMAN,**
   ADVOCATE, COURT VIEW COMPLEX, COLLECTORATE,
   KOTTAYAM, (ADVOCATE COMMISSIONER) PIN - 686 001.

   R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
   R3 BY ADVS. SRI.A.ANTONY
   SMT.LEELAMMA ANTONY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 319 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: **TRUE COPY OF THE JUDGMENT DATED 31/01/2012 IN ST.NO. 446/2008 OF JFCM COURT, VAIKOM.**

EXHIBIT-P2: **TRUE COPY OF THE NOTICE DATED 25.02.2010 ISSUED BY THE 3RD RESPONDENT U/S 13 (2)OF THE SARFAESI ACT.**

EXHIBIT-P3: **TRUE COPY OF THE ORDER DATED 24/05/2011 IN S.A.NO.174/2011.**

EXHIBIT-P4: **TRUE COPY OF THE NOTICE DATED 12/06/2011 OF THE 3RD RESPONDENT.**

EXHIBIT-P5: **TRUE COPY OF THE CMP NO. 545/2011.**

EXHIBIT-P6: **TRUE COPY OF THE ORDER DATED 29/07/2013 OF CJM, KOTTAYAM.**

EXHIBIT-P7: **TRUE COPY OF THE WRITTEN STATEMENT IN O.A .69/2014.**

EXHIBIT-P8: **TRUE COPY OF THE NOTICE DATED 04/12/2014.**

EXHIBIT-P9: **TRUE COPY OF THE NOTICE DATED 18/12/2004.**

EXHIBIT-P10: **TRUE COPY OF THE NOTICE DATED 30/12/2014.**

RESPONDENT(S)' EXHIBITS
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NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 319 of 2015 (L)

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Dated this the 15th day of January, 2015

JUDGMENT

The petitioner, who had availed of a loan from the 2nd respondent Bank, defaulted in re-payment of the same. Consequently, the respondent bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', against the petitioner. Ext.P2 is the notice issued under Section 13(2) of the SARFAESI Act to the petitioner in that regard. Ext.P6 is the order passed by the Chief Judicial Magistrates Court, Kottayam appointing the 4th respondent as Advocate Commissioner to take possession of the immovable property that was offered as security to the respondent Bank, for the loan availed by the petitioner. In the writ petition, the petitioner impugns the steps initiated by the respondent Bank for recovery of the loan amounts.

2. Heard Sri.P.C.Haridas, learned counsel appearing for the petitioner and Sri.A.Antony, learned Standing counsel appearing for the respondent Nos.2 and 3, who would vehemently opposed the prayers of the petitioner in the writ petition.

3. On a consideration of the facts and circumstances of the case

and the submissions made across the bar, I note that the sole prayer of the petitioner is to permit him to remit the amount outstanding to the bank in easy installments. Taking into account the plea of financial hardship raised by the petitioner, I dispose the writ petition with the following directions:

i) The total amount outstanding from the petitioner to the respondent bank is stated to be Rs.29,90,409/- together with accrued interest. Accordingly, if the petitioner effects payment of Rs.29,90,409/-, together with accrued interest, in four equal and successive monthly installments commencing from 16.02.2015, then, the recovery steps initiated against him by the respondent bank shall be kept in abeyance.

(ii) It is made clear that, if the petitioner commits a default in respect of any of the installments, he will lose the benefits of this judgment and the respondent bank will be free to continue the recovery proceedings against him from the stage at which they presently stand.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/15/01/