

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 2579 of 2015 (V)

PETITIONER(S) :

1. VENU, AGED 62 YEARS,
S/O.GOPALAN, PERUMUTTATH HOUSE, WARD NO.13,
VALLUVALLY KARA, KOTTUVALLY PANCHAYAT, PARAVUR TALUK,
ERNAKULAM DISTRICT.
2. JOHNSON, AGED 50 YEARS,
S/O.XAVIER, MUTTATH HOUSE, CHIRAKKAKOM KARA,
VARAPPUZHA VILLAGE, PARAVUR TALUK,
ERANAKULAM DISTRICT.
3. AUGUSTINE, AGED 62 YEARS,
S/O.VARKEY, THALIYATH HOUSE, PUTHANPALLY KARA,
VARAPPUZHA VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.

**BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.P.J.JOSE**

RESPONDENT(S) :

1. UNION OF INDIA,
REP.BY SECRETARY, DEPT.OF BANKING AFFAIRS,
NEW DELHI- 110 001.
2. AXIS BANK LTD., A BANKING COMPANY
INCORPORATED UNDER THE COMPANIES ACT,
1956, AND GOVERNED BY BANKING REGULATION ACT,
HAVING ITS REGISTERED OFFICER AT THRISHUL,
OPP.SAMARTHESWAR TEMPLE, LAW GARDEN, ELLIS BRIDGE,
AHMEDABAD - 380 006 (E), HAVING ITS RETAIL ASSET CENTRE
AT CHICAGO PLAZA, RAJAJI ROAD, ERNAKULAM,
REP.BY ITS SENIOR MANAGER AND AUTHORISED OFFICER,
ANAND.A

WP(C).No. 2579 of 2015 (V)

3. THE AUTHORISED OFFICER,
AXIS BANK LTD., A BANKING COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956, AND GOVERNED BY BANKING
REGULATION ACT, HAVING ITS REGISTERED OFFICER AT THRISHUL,
OPP.SAMARTHESWAR TEMPLE, LAW GARDEN, ELLIS BRIDGE,
AHMEDABAD - 380 006 (E) HAVING ITS RETAIL ASSET CENTRE AT
CHICAGO PLAZA, RAJAJI ROAD, ERNAKULAM - 682 011.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADVS. SRI.P.PAULCHAN ANTONY
SRI.G.AJITH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-05-2015, ALONG WITH OPDRT. 29/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE PHOTOSTAT COPY OF THE RENT DEED IN RELATION TO BUILDING NO.VII/915 OF KOTTUVALLY GRAMA PANCHAYAT IN RELATION TO THE 1ST PETITIONER.
- EXT.P2: TRUE PHOTOSTAT COPY OF THE RENT DEED DATED 14.10.2008 IN RELATION TO THE 2ND PETITIONER.
- EXT.P3: TRUE PHOTOSTAT COPY OF THE RENT DEED IN RELATION TO BUILDING NO.VIII/913 OF VARAPPUZHA GRAMA PANCHYAT, IN RELATION TO THE 3RD PETITIONER, SHRI AUGUSTINE, ORIGINALLY IN THE NAME OF ELIZABATH, W/O.AUGUSTINE.
- EXT.P4: TRUE PHOTOSTAT COPY OF THE RENT DEED DATED 01.09.2007 IN RELATION TO THE 3RD PETITIONER.
- EXT.P5: TRUE PHOTOSTAT COPY OF THE NOTICE WHICH WAS ACTUALLY DELIVERED IN THE NAME OF FRANCIS ANDREW XAVIER.
- EXT.P6: TRUE PHOTOSTAT COPY OF THE STATEMENT DATED 24.10.2014 INDICATING THE LOAN SANCTION.
- EXT.P7: TRUE PHOTOSTAT COPY OF THE OBJECTION DATED 15.05.2014 GIVEN BY THE 1ST PETITIONER.
- EXT.P8: TRUE PHOTOSTAT COPY OF OBJECTION DATED 15.05.2014 GIVEN BY THE 2ND PETITIONER.
- EXT.P9: TRUE PHOTOSTAT COPY OF OBJECTION DATED 15.05.2014 GIVEN BY THE 3RD PETITIONER.
- EXT.P10: TRUE PHOTOSTAT COPY APPLICATION PREFERRED BY THE 2ND AND 3RD RESPONDENT BEFORE THE CHIEF JUDICIAL MAGISTRATE.
- EXT.P11: TRUE PHOTOSTAT COPY OF COMMISSION REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER.
- EXT.P12: TRUE PHOTOSTAT COPY OF THE ORDER IN CMP BEFORE CHIEF JUDICIAL MAGISTRATE COURT FILED BY LILLY AND OTHERS.
- ADDL.EXT.P13: TRUE COPY OF THE NOTICE FOR DISPOSSESSION ON 11.05.2015 ISSUED BY THE ADVOCATE COMMISSIONER.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 2579 of 2015 & OP (DRT) No.29 of 2015

Dated this the 26th day of May, 2015

J U D G M E N T

The petitioners are persons claiming as tenants challenge the SARFAESI proceedings. Admittedly the borrower is one Sri.Francis Andrews Xavier who committed default in repaying the loan amount.

2. It is admitted that respondent bank has already taken possession of the residential house and two vacant shops. The rooms are alleged to be in possession of the petitioners.

3. By the interim order, the petitioners were permitted to pay the amount without prejudice to the contentions of the respondent bank. Accordingly payment of Rs.17,00,000/- has been effected . The petitioners seek further time to pay off the entire over dues and also seek re-delivery of the building and property which has been taken over by the bank.

4. The learned counsel for the bank would oppose

the claim of the petitioner and submits that the petitioner has no locus standi. It is further submitted that petitioners' claim is based on unregistered documents and therefore, they have no interest in the immovable property. It is also submitted that the writ petition is not maintainable.

5. I am of the view, as far as the bank is concerned, the amount advanced to the borrower need to be secured. The third party is consciously making the payment. Therefore, it is not a payment made under a mistake.

6. In that view of the matter, if the petitioners pay the amount, they cannot claim refund of the amount from the bank. In that view of the matter, the bank's interest can be protected when they receive the amount from the petitioner.

7. Whether the petitioners have any interest in the immovable property, that need not be looked into at this stage. In that view of the matter this writ petition is disposed of with the following directions.

i) Petitioners shall pay over due amount 35,45,634 as on

the month of May 2015 in six equal instalments along with regular EMI. On payment of above amount, the property, which has been taken over from the borrower has to be returned to the borrower.

- ii) If the petitioners commit default in paying any of the instalments, the respondent bank is at liberty to proceed against the property of the borrower.
- iii) It is made clear that petitioners cannot claim any right over the property or in respect of the payment effected or to be effected to the respondent bank based on direction of this Court.
- iv) If the petitioners pay the entire over dues the respondent bank is bound by the direction to return the possession to the borrower.

In view of the above judgment, OP No.29 of 2015 is closed as infructuous.

Sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/