IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 4234 of 2015 (D)

PETITIONER(S):

WILSON THOMAS, AGED 43 YEARS
SON OF LATE MR. THOMAS, PROPRIETOR
AMALA TRADIG COMPANY, XVI/338, NEAR JBS
ANGAMALLY (PO), ERNAKULAM, PIN 683572.

BY ADVS.SRI.SHAJI CHIRAYATH
SMT.JIJI M. VARKEY
SRI.M.M.SHAJAHAN

RESPONDENT(S):
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1. UNION OF INDIA
MINISTRY OF FINANCE DEPARTMENT OF FINANCIAL SERVICES,
3RD FLOOR , JEEVAN DEEP BUILDING, SNSAD MARG,
NEW DELHI, PIN 110001, REPRESENTED BY ITS FINANCE SECRETARY.

2. DEWAN HOUSING FINANCE CORPORATION LIMITED,
WARDEN HOUSE, 2ND FLOOR, SIR P.M.ROAD,
FOR MUMBAI 400001, REPRESENTED BY ITS MANGING DIRECTOR.

3. AUTHORISED OFFICER,
DEWAN HOUSING FINANCE COOPORATION LIMITED NO.82,
1ST FLOOR, DR. RAJKUMAR ROAD, 2ND BLOCK,
RAJAI NAGAR, BANGALURU-560010.

4. XAVIER P.E, AGED 46 YEARS,
SON OF MR. PAPPU, AUTHORISED OFFICER
DEWAN HOUSING FINANCE COOPERATION LIMITED,
K.M.M. BUILDING, 1ST FLOOR,
PALARIVATTOM (PO), ERNAKULAM, PIN 682025.

5. JINIMOL P.M
ADVOCATE COMMISSIONER, MEMBER
ERNAKULAM DISTRICT BAR ASSOCIATION
DISTRICT COURT COMPLEX, ERNAKULAM, PIN 682011.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2,R3,R4 BY ADVS. SRI.P.PAULOCHAN ANTONY
SRI.G.AJITH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 4234 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **COPY OF THE CERTIFICATE OF REGISTRATION UNDER THE KERALA VALUE ADDED TAX ACT**

P2: **COPY OF THE NOTICE UNDER SECTION 13(2) OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT**

P3: **COPY OF THE OBJECTION FILED BY THE PETITIONER UNDER SECTION 13 (3A) OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT**

P4: **COPY OF THE PROOF OF DELIVERY CARD ISSUED BY SPEED POST AUTHORITIES EVIDENCING RECEIPT OF EXHIBIT P3 OBJECTION**

P5: **COPY OF THE NOTICE AFFIXED BY 5TH RESPONDENT ADVOCATE COMMISSIONER**

P6: **COPY OF THE CRL.MP. NO.683 OF 2015 ON THE FILES OF CJM ERNAKULAM**

P7: **COPY OF THE AFFIDAVIT FILED ALONG WITH EXHIBIT P6 APPLICATION ON THE FILES OF CJM ERNAKULAM**

P8: **COPY OF THE ORDER IN CRL.MP.683/15 IN PASSED BY THE CHIEF JUDICIAL MAGISTRATE, ERNAKULAM PURSUANT TO EXHIBIT P6 APPLICATION.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 4234 of 2015

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Dated this the 9th day of March, 2015

JUDGMENT

The petitioner, who had approached this Court challenging the steps taken by the respondent bank under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', for proceeding against the property mortgaged by him as a security for availing the loan from the respondent bank, now contends that the property, that was treated as mortgaged property and a secured asset for the purpose of advancing of the loan by the respondent bank, was not actually mortgaged by him in favour of the respondent bank. Inasmuch as, this is a factual issue, that has to be gone into by the adjudicatory forum entrusted with the task of deciding, whether the proceedings that have been initiated by the respondent bank are in accordance with the provisions of the SARFAESI Act, I am of the view that a writ petition under Article 226 of the Constitution of India, cannot be maintained by the petitioner. Thus, leaving it open to the petitioner to approach the Debt Recovery Tribunal for appropriate remedies, against the action taken by the respondent bank, I dismiss the writ petition, in its challenge against the steps taken by the respondent bank.

Counsel for the petitioner would submit that there is already a stay granted in the matter, against the further steps to be taken by the respondent bank pursuant to the order of the Chief Judicial Magistrate Court, Ernakulam, appointing an Advocate Commissioner to take possession of the secured asset. It is his apprehension that pursuant to the dismissal of the writ petition, and before he approaches the Debt Recovery Tribunal, the respondent bank may continue with the proceedings for taking possession of the property. Taking note of the said apprehension of the petitioner, I make it clear that the interim stay granted by this Court shall continue for a period of one week from today so as to enable the petitioner to approach the Debt Recovery Tribunal, in the meanwhile. I make it clear that the stay order shall cease to operate on the expiry of the period of one week from today.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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