

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

WP(C).No. 5521 of 2015 (M)

PETITIONER(S):

1. **BABU JOHN,
S/O. JOHN, PALATHUMPATTIL HOUSE, CHENGANNUR.P.O.
PIN-689121.**
2. **DAISY JOHN,
W/O. BABU JOHN, PALATHUMPATTIL HOUSE, CHENGANNUR.P.O.
PIN-689121.**

**BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA**

RESPONDENT(S):

1. **THE SOUTH INDIAN BANK LIMITED,
REPRESENTED BY ITS CHIEF MANAGER, M.G. ROAD BRANCH,
ERNAKULAM-682035.**
2. **THE AUTHORISED OFFICER (CHIEF MANAGER),
THE SOUTH INDIAN BANK LIMITED, SIB BUILDING,
INFOPARK ROAD, RAJAGIRI VALLEY.P.O., KAKKAND,
KOCHI-682039.**

**BY ADVS.SRI.K.K.CHANDRAN PILLAI (SR.) SC
SRI.K.K.JOHN,SC
SRI.K.S.DILIP
SRI.SAJU N.A.
SMT.G.LEKHA
SMT.P.J.FLONY
SMT.A.I.HAYARUNNISA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE CERTIFICATE ISSUED BY THE STATE BANK OF TRAVANCORE DATED 14-7-2014.
- EXT.P2. TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE MARADU GRAMA PANCHAYAT DATED 15-7-2010.
- EXT.P3. TRUE COPY OF APPLICATION FILED AS O.A. NO. 564/2013 IN THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM DATED 19-11-13.
- EXT.P4. TRUE COPY OF THE ORDER PASSED BY THE DEBTS RECOVERY TRIBUNAL IN I.A. NO. 1267/2014 IN O.A. NO. 564/2013 DATED 22-07-2014,
- EXT.P5. TRUE COPY OF THE SALE NOTICE PUBLISHED BY THE 2ND RESPONDENT DATED 23-6-2014.
- EXT.P6. TRUE COPY OF THE APPLICATION FILED AS S.A. NO. 279/2014 BEFORE THE DEBTS RECOVERY TRIBUNAL ERNAKULAM DATED 4-8-2014.
- EXT.P7. TRUE COPY OF THE SALE NOTICE PUBLISHED BY THE 2ND RESPONDENT DATED 24-11-14.
- EXT.P8. TRUE COPY OF I.A. NO. 2834/2014 IN S.A. NO. 279/2014 OF THE DEBTS RECOVERY TRIBUNAL DATED 3-12-14.
- EXT.P9. TRUE COPY OF THE I.A. NO. 438/2015 IN S.A. NO. 279/2014 OF THE DEBTS RECOVERY TRIBUNAL DATED 23-01-2015.
- EXT.P10. TRUE COPY OF THE I.A. NO. 235/2015 IN S.A. NO. 279/2014 OF THE DEBTS RECOVERY TRIBUNAL DATED 23-1-2015.
- EXT.P11. TRUE COPY OF THE NOTICE DATED 13-02-2015 ISSUED BY MR. JERRY SEBASTIAN T.R., ADVOCATE AS PER ORDER CMP NO. 681/2015 OF THE CHIEF JUDICIAL MAGISTRATE'S COURT, ERNAKULAM.
- EXT.P12. TRUE COPY OF THE COMPLAINT FILED BY THE R1 IN THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM IN CMP.681/2015 DATED 27/1/15

RESPONDENT(S)' EXHIBITS

- EXT.R1(A): COPY OF SALE DEED NO.2510/13 DATED 3/9/13 OF THE MARADU SUB REGISTRY OFFICE
- EXT.R1(B): COPY OF ACKNOWLEDGEMENT CARD SIGNED BY THE PETITIONERS.

/ TRUE COPY /

P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.5521 of 2015

Dated this the 24th day of June, 2015

J U D G M E N T

The petitioners are the purchasers from a borrower of the respondent Bank. It is admitted that, the petitioners purchased the property, which is the subject matter of securitisation proceedings, in the year 2011. According to the learned Senior Standing Counsel for the Bank, the liability is more than 23 crores and the mortgage was in the year 2005.

2. The petitioners' main challenge is that, the Bank is attempting to dispossess them without notice. It is also submitted that, they have already moved S.A.No.279/2014 before the Debt Recovery Tribunal, Ernakulam under Section 17 of the SARFAESI Act. It is further submitted that, when the matter was posted for final judgment after hearing, the Bank made an attempt to dispossess them. It is also pointed out by the counsel that, pendency of the S.A. was not referred in the application filed before the Chief Judicial Magistrate for assistance.

3. The petitioner seeks the following relief in this writ petition :

issue a writ of certiorari or any other appropriate writ or direction calling for the records of C.M.P No.681/2015 of the Chief Judicial Magistrate Court, Ernakulam resulting in Exhibit P11 notice and set aside the same.

4. The learned Senior Standing Counsel for the Bank submits that, the DRT refused to grant stay in all occasions and there was no prohibition for proceeding with dispossession in accordance with law. It is also submitted that, the property of the petitioners along with other properties have bid in auction by the Bank and the amount has been deposited in the account of the authorised officer. It is further submitted that, the account of the borrower remained as NPA for a long period and the Bank records reflect it as an unrecovered amount.

5. This Court under Article 226 of the Constitution have limited jurisdiction to interfere with the SARFAESI proceedings. However, taking note of the fact that the petitioners have moved S.A.No.279/2014, this writ petition is disposed of with the following directions :

1. There shall be a direction to the Debt Recovery Tribunal, Ernakulam to pass final orders on S.A.No.279/2014 within one month from the date of receipt of a copy of this judgment. The DRT is also directed to serve free copy of the judgment within three days of pronouncement of the judgment.
2. In the light of the above direction, proceedings for dispossession shall be deferred for a period of six weeks.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.