

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 6276 of 2015 (H)

PETITIONER(S) :

**V.A.MOHAMMED,
S/O. VALIYAKATH ADIMAKUTTY, 9/D, SAKTHAN APARTMENTS,
ST NAGAR THRISSUR, PRESENTLY RESIDING AT VILLA-4,
AL HILAL, DOHA, QUATAR, PB: NO.201765,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER,
AQIB, S/O.MOHAMMED, VALIYAKATH HOUSE,
9/D, SAKTHAN APARTMENTS, ST NAGAR, THRISSUR DISTRICT.**

**BY ADVS.SRI.J.JULIAN XAVIER
SMT.ANIES MATHEW**

RESPONDENT(S) :

- 1. THE FEDERAL BANK LIMITED,
THRISSUR/MAIN BRANCH, ANJALI COMPLEX, ROUND NORTH,
THRISSUR - 680 001.**
- 2. AUTHORIZED OFFICER, THE FEDERAL BANK LIMITED,
THRISSUR/MAIN BRANCH, ANJALI COMPLEX, ROUND NORTH,
THRISSUR - 680 001.**
- 3. KHADER ABOOBACKER, S/O.ABOOBACKER,
KARUPPAM VEETIL HOUSE, CHOWLLURPADY,
KANDANASSERY P.O., THRISSUR.**

**R1 & R2 BY ADVS. SRI.A.ANTONY
SMT.LEELAMMA ANTONY
R3 BY ADV. SRI.P.RAMACHANDRAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: A TRUE COPY OF THE LETTER DATED 18-11-2010 ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P2: A TRUE COPY OF THE E-MAIL ADDRESSED TO THE PETITIONER BY THE 2ND RESPONDENT DATED 15-05-2013.**
- EXHIBIT P3: A TRUE COPY OF THE REPLY DATED 19-11-2013 FILED BY THE PETITIONER THROUGH E-MAIL.**
- EXHIBIT P4: A TRUE COPY OF THE LETTER DATED 16-03-2014.**
- EXHIBIT P5: A TRUE COPY OF THE E-MAIL LETTER ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P6: A TRUE COPY OF THE E-MAIL DATED 29-09-2014 ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P7: A TRUE COPY OF THE LETTER DATED 29-11-2014.**
- EXHIBIT P7(A): A TRUE COPY OF THE COPY OF THE POSTAL RECEIPT.**
- EXHIBIT P8: A TRUE COPY OF THE CERTIFICATE OF ENCUMBRANCE DATED 27-11-2014.**
- EXHIBIT P9: COPY OF THE LATEST LAND TAX RECEIPT DATED 05-12-2013.**

RESPONDENT(S)' EXHIBITS :

- EXT.R1(A): TRUE COPY OF THE A TRUE COPY OF SALE NOTICE OF 1ST RESPONDENT DATED 05.09.2014 SENT TO THE PETITIONER AND OTHERS.**
- EXT.R1(B): TRUE COPY OF THE SALE NOTICE DATED 05.09.2014 PUBLISHED IN MANGALAM MALAYALAM DAILY.**
- EXT.R1(C): TRUE COPY OF THE SALE NOTICE DATED 05.09.2014 PUBLISHED IN NEW INDIAN EXPRESS, ENGLISH NEWS PAPER.**
- EXT.R1(D): TRUE COPY OF THE LETTER DATED 26.06.2010 OF THE CANARA BANK, ATHANI BRANCH ADDRESSED TO THE PETITIONER.**

//TRUE COPY//

P.A.TO JUDGE.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.6276 of 2015

Dated this the 2nd day of December 2015

JUDGMENT

The petitioner who had availed a cash credit facility from the respondent bank and defaulted in repayment of the same, is aggrieved by the steps taken by the respondent bank to recover the defaulted loan amounts. In the writ petition, the petitioner is aggrieved by the sale effected by the respondent bank, of property belonging to the petitioner, to the 3rd respondent. It is the specific case of the petitioner that the sale is in violation of Rules 8 & 9 of Security Interest(Enforcement) Rules 2002.

When the writ petition came up for admission, this Court acting on the request of the parties, had relegated parties before the mediation centre, with a view to explore the possibility of a mediated settlement. By a report dated 27.11.2015, the mediator has informed this Court that the case could not be settled through mediation. Under the said circumstances, I am of the view that the petitioner should be relegated to his remedies before the Debts Recovery Tribunal, under the SARFAESI Act, for challenging the

sale proceedings. I take note of the submission of counsel for the petitioner that on account of the pendency of the writ petition, the statutory period for approaching the Debts Recovery Tribunal with an application under Section 17 of the SARFAESI Act, has expired. Inasmuch as the issue to be considered is a factual one, that would require the taking of evidence, I am of the view that the matter should be considered by the Debts Recovery Tribunal in proceedings under the SARFAESI Act. Accordingly, I dispose the writ petition with the following directions:-

- i) If the petitioner approaches the Debts Recovery Tribunal with an application under Section 17, within a period of two weeks from today, then the Debts Recovery Tribunal, Ernakulam shall consider the same without looking into the aspect of limitation under the SARFAESI Act, and decide the application on merits in accordance with law.
- ii) It is made clear that if the petitioner does not prefer the application under Section 17, within the time granted in this judgment, he shall lose the benefit of this judgment.
- iii) The amounts remitted by the petitioner to the respondent bank, during the pendency of the writ petition, shall be taken note of by the Debts Recovery Tribunal and the said payments shall be subject to the

out come of the proceedings before the Debts Recovery Tribunal.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/