

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 6380 of 2015 (V)

PETITIONER :

**THRIDEEP, AGED 52 YEARS,
S/O.SIVADASAN, DILEEP BHAVAN (SANTHOSH BHAVAN)
KUNNIKODU MURI, VIAKKUDY VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL

RESPONDENTS :

- 1. THE AUTHORIZED OFFICER, UNION BANK OF INDIA,
REPRESENTED BY ITS CHIEF MANAGER, REGIONAL OFFICE,
UNION BANK BHAVAN, M.G.ROAD, STATUE JUNCTION,
THIRUVANANTHAPURAM, PIN-695 015.**
- 2. THE BRANCH MANAGER,
UNION BANK OF INDIA, PATHANAPURAM P.O., KOLLAM
PIN-689 695.**
- 3. SRI.SANTHOSH KUMAR,
S/O.SOMAN NAIR, SANTHOSH BHAVAN, CHEKAM MURI
PIDAVOOR P.O., PIDAVOOR VILLAGE, PATHANAPURAM
KOLLAM, PIN-689 695.**

**R1 & R2 BY SRI.A.S.P.KURUP, SC, UBI
R3 BY SRI.A.SANIL KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: THE TRUE COPY OF THE BUILDING TAX RECEIPT ISSUED BY THE SECRETARY, VILAKKUDY GRAMA PANCHAYATH TO THE PETITIONER.
- EXT.P2: THE TRUE COPY OF THE SALE DEED NO.405/2010 OF PUNALUR SUB REGISTRY.
- EXT.P3: THE TRUE COPY OF THE JUDGMENT IN OS.NO.76/2011 DATED 02.08.2011 OF THE MUNSIF COURT, PUNALUR.
- EXT.P4: THE TRUE COPY OF THE TREATMENT RECORDS OF THE PETITIONER'S GRANDSON OBTAINED FROM REGIONAL CANCER CENTRE, THIRUVANANTHAPURAM.
- EXT.P5: THE TRUE COPY OF THE ORDER DATED 09.01.2014 IN O.P.(C) NO.86/2014 OF THIS HON'BLE COURT.
- EXT.P6: THE TRUE COPY OF THE A DIARY OF THE MUNSIF COURT, PUNALUR DATED 03.09.2014.
- EXT.P7: THE TRUE COPY OF THE ENERGY BILL REMITTED BY THE PETITIONER TO THE K.S.E.B.VIALKKUDY.
- EXT.P8: THE TRUE COPY OF THE ORDER IN C.M.P.NO.9167/2014 DATED 14.11.2014 OF THE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM.

RESPONDENT(S)' EXHIBITS

: NIL

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 6380 of 2015 (V)

.....
Dated this the 19th day of March, 2015

JUDGMENT

The petitioner approached this Court when the respondent Bank had 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 property in which, the petitioner is stated to be residing.

2. The facts in the writ petition would disclose that, the respondent Bank had advanced a loan to the 3rd respondent, to whom the petitioner had sold the property in question. It is the said property that was mortgaged as security for the loan by the 3rd respondent. The 3rd respondent defaulted in repayment of the loan amount and accordingly the respondent Bank initiated proceedings under the SARFAESI Act for recovery of the loan amount. As part of that process, proceedings were also initiated against the property, where the petitioner is currently residing. It would appear that, aggrieved by the proceedings taken by the respondent Bank under the SARFAESI Act, the 3rd respondent borrower had approached this Court earlier through W.P.(C) No.34949 of 2014. That writ petition was disposed by judgment dated 20.12.2014, wherein this Court permitted the 3rd

respondent to clear the liability towards the overdue amount to the respondent Bank, in four equal monthly installments commencing from 31.12.2014. The 3rd respondent was also directed to keep up the regular monthly installments in respect of the loan. The judgment made it clear that, if there was any default committed by the 3rd respondent, the respondent Bank would be at liberty to continue the steps for realisation of the outstanding amounts from the 3rd respondent.

3. It is stated by the learned Standing Counsel for the respondent Bank that the 3rd respondent did not comply with the directions in the aforesaid judgment, and hence, the respondent Bank was constrained to proceed against the property in terms of the SARFAESI Act. It is at that stage that the present writ petition has been filed by the petitioner, who is not the owner of the property. It is stated that there is a suit currently pending in the Munsiff Court, Punalur, wherein the right of the petitioner over the property in question is also one of the issues to be decided.

4. I have heard Smt.Preetha.P.S., the learned counsel for the petitioner and Sri.A.S.P.Kurup, the learned Standing counsel for the respondent Bank.

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

and also the submissions made across the Bar and taking note of the fact that, the petitioner is not the owner of the property in question, I am of the view that, the petitioner does not have the locus standi to impugn the action taken by the respondent Bank against the property in question, pursuant to a default in repayment of the loan amount by the 3rd respondent, who is the owner of the property. Therefore, this writ petition is dismissed as not maintainable.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/19/03/