

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 7018 of 2015 (B)

PETITIONER(S):

**ALPHONSAMMA THOMAS,
W/O.THOMAS SCARIA, PEELIYANICKAL HOUSE, NALANCHIRA,
THIRUVANANTHAPURAM.**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S):

**CATHOLIC CYRIAN BANK LIMITED,
REPRESENTED BY ITS AUTHORISED OFFICER
& DEPUTY ZONAL MANAGER,
ZONAL OFFICE, MALANKARA BUILDING, 1ST FLOOR,
UNIVERSITY CAMPUS, THIRUVANANTHAPURAM - 695 034.**

BY ADV. SRI.C.A.JOY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 7018 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT. P1: TRUE COPY OF THE NOTICE NO. TVPMZ/SARFAESI/2013 DATED 30.07.2013
ISSUED TO PETITIONER BY THE BANK.**

**EXT. P2: TRUE COPY OF JUDGMENT OF THIS HONOURABLE COURT IN
WPC.NO.500/2014 DATED 07.01.2014.**

**EXT. P3: TRUE COPY OF THE STATEMENT OF ACCOUNTS DATED 25.11.2014 ISSUED
TO THE HUSBAND OF PETITIONER FROM THE BANK.**

**EXT. P4: TRUE COPY OF THE AUCTION SALE NOTICE DATED 28.01.2015 ISSUED BY
THE BANK**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms v/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7018 OF 2015 (B)

Dated this the 5th day of March, 2015

J U D G M E N T

The petitioner, whose husband had availed a loan from the respondent bank for business purposes, is aggrieved by the action taken by the respondent bank against the properties, under joint ownership of the petitioner and her husband, that were mortgaged for the purposes of the loan advanced to the husband. The prayer in the writ petition is for the grant of installments to enable the petitioner to clear the outstanding dues to the respondent bank, so as to prevent the residential property from being proceeded against by the bank. When the case was taken up for admission, it was noticed that the petitioner's husband had earlier approached this Court through W.P.(C).No.500/2014 seeking substantially the same reliefs as are sought for in the instant case by the petitioner, and by Ext.P2 judgment, this Court had granted the petitioner's husband the facility to discharge the loan amounts in installments. It is not in dispute that the petitioner's husband did not comply with the said conditions. It also needs to be mentioned that, when the petitioner's husband thereafter approached this Court by filing W.P.(C).No.6656/2015,

claiming the same reliefs as are sought for by the petitioner in the instant writ petition, that writ petition was dismissed by this Court holding that the writ petition was not maintainable at the instance of the petitioner's husband. Although the learned counsel for the petitioner would contend that, the petitioner is the guarantor of the loan advanced to her husband, and that the dismissal of the writ petition preferred by the husband of the petitioner would not stand in the way of any relief being extended to the petitioner in the present writ petition, I am of the view that, inasmuch as the petitioner and her husband are joint owners of the property, that was mortgaged to the respondent bank for the purposes of availing of the loan, and further they reside together in the said residential property, and the petitioner was well aware of the proceedings initiated against the respondent bank by her husband, the petitioner cannot lay claim to a right to restrain the respondent bank from proceeding against the property. This is more so because the jurisdiction that is invoked in this case is under Art. 226 of the Constitution of India, which is discretionary in nature.

Counsel for the petitioner would submit that Ext.P2 judgment pertains to a different cause of action, in that it was rendered in a writ

petition which was preferred at a time when the bank had proposed to take possession over the property. It is pointed out that the factual situation now is that, steps are being taken by the bank for a sale of the same property and, therefore, this would give rise to a different cause of action for the purposes of maintaining the present writ petition, at the instance of the petitioner. I notice that in Ext.P2 judgment, there was a clear direction that, if there was no compliance with the terms of the said judgment, the respondent bank was to surge ahead with the coercive steps, that were put on hold by the court at the time of granting installments. In that view of the matter, irrespective of the stage at which the proceedings initiated by the respondent bank are at present, I am of the view that the present writ petition, at the instance of the petitioner, seeking substantially the same reliefs as was already sought for in the earlier writ petitions filed by her husband, cannot be maintained. Resultantly, the writ petition fails, and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp