

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WP(C).No. 7088 of 2015 (I)

PETITIONER(S) :

**MANIKANTAN NAIR,
SREEVILASOM, NARICHILODU, PULIPPARA,
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.H.HAMZA ROWTHER
SRI.V.K.PEERMOHAMED KHAN**

RESPONDENT(S):

**THR AUTHORIZED OFFICER,
NEDUMANGAD CO-OPERATIVE URBAN BANK LTD.NO.3193,
NEDUMANGAD.P.O, THIRUVANANTHAPURAM-695 541.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

WP(C).No. 7088 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXT.P1: TRUE COPY OF THE APPLICATION FILED BY THE RESPONDENT
BANK BEFORE THE CJM COURT, THIRUVANANTHAPURAM
DATED 16.12.2014.**

**EXT.P2: TRUE COPY OF THE ORDER PASSED BY THE THE CJM COURT,
THIRUVANANTHAPURAM IN M.C NO.1332/2014 DATED 16.12.2014.**

**EXT.P3: TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE
COMMISSIONER ON 16.01.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.7088 of 2015

Dated this the 8th day of July, 2015

JUDGMENT

The petitioner, impugning action initiated under the SARFAESI proceedings, has approached this Court. The petitioner availed a mortgage loan of Rs.5 lakhs. Though notice has been issued to the respondents, none appeared for them.

2. The case of the petitioner is that the liability is only less than Rs.1 lakh. Therefore, no proceedings can be initiated under the SARFAESI Act and also the same is below 20% of the principal loan amount. The petitioner, particularly, relies on the affidavit filed by the Officer of the Bank before the Chief Judicial Magistrate under Section 14 of the SARFAESI Act, wherein it is stated that the total liability is only Rs.96,583/-. The petitioner also relies under Section 31 (h) and (j) of the SARFAESI Act, which reads as follows:

- (h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;
- (j) any case in which the amount due is less than twenty percent of the principal amount and interest thereon.

In the absence of any controverting facts, I am of the view, the SARFAESI proceedings initiated against the petitioner are illegal. Accordingly, all proceedings initiated against the petitioner are quashed.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE