

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 7325 of 2015 (M)

PETITIONER(S):

**RADHAMMA K., AGED 66 YEARS,
W/O.P.V.RAJAPPAN NAIR, VINOD BHAVAN, CHELAMATTOM,
OKKAL P.O., ERNAKULAM DISTRICT.**

**BY ADVS.SRI.C.A.NAVAS
SRI.P.A.SHAJI SAMAD
SRI.T.K.SASIKUMAR
SOLOMAN C.J.
SMT.AMBILY EG**

RESPONDENT(S):

- 1. THE CATHOLIC SYRIAN BANK,
REPRESENTED BY THE CHIEF MANAGER AND AUTHORIZED OFFICER,
ZONAL OFFICE, DJM BUILDING, MARKET ROAD,
ERNAKULAM, KOCHI 11.**
- 2. M.P.REJI @ REJI MALAYIL,
SREELAKSHMI COMPLEX, STATUE JUNCTION, THRIPPUNITHURA,
PIN - 682 301.**
- 3. ANITHA REJI,
W/O.M.P.REJI @ REJI MALAYIL, SREELAKSHMI COMPLEX,
STATUE JUNCTION, THRIPPUNITHURA, PIN - 682 301.**
- 4. VINAYAKUMAR T.R., AGED 36 YEARS,
S/O.P.V.RAJAPPAN NAIR, VINOD BHAVAN, CHELAMATTOM,
OKKAL P.O., ERNAKULAM DISTRICT - 687 310.**
- 5. THE BRANCH MANAGER,
CATHOLIC SYRIAN BANK LTD., THRIPPUNITHURA BRANCH,
ERNAKULAM DISTRICT, PIN - 682 301.**

R1 BY ADV. SRI.C.A.JOY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 7325 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: PHOTOSTAT COPY OF THE SETTLEMENT DEED NO. 6140/2008 OF
SRO PERUMBAVOOR DATED 07/08/2008.**

**EXT.P2: PHOTOSTAT COPY OF THE DEED NO. 2790/2009 OF SRO PERUMBAVOOR
DATED 07/08/2009.**

**EXT.P3: PHOTOSTAT COPY OF THE POWER OF ATTORNEY NO. 102/IV/2012 OF SRO
PERUMBAVOOR DATED 03/05/2009.**

EXT.P4: PHOTOSTAT COPY OF THE NOTICE DATED 07/11/2013.

EXT.P5: PHOTOSTAT COPY RECEIPT DATED 17/07/2014.

EXT.P6: PHOTOSTAT COPY OF THE REPRESENTATION DATED NIL.

**EXT.P7: PHOTOSTAT COPY OF THE JUDGMENT DATED 01/08/2014 IN
WPC.NO. 8247/2014 OF THE HONOURABLE HIGH COURT.**

EXT.P8: PHOTOSTAT COPY OF THE PAYMENT RECEIPT DATED 11/08/2014.

EXT.P9: PHOTOSTAT COPY OF THE SALE DEED DATED 17/07/2014.

**EXT.P10: PHOTOSTAT COPY OF THE EMBASSY ATTESTED POWER OF ATTORNEY
DATED 21/07/2014.**

**EXT.P11: PHOTOSTAT COPY OF THE JUDGMENT DATED 20/11/2014 IN
WPC.NO. 27283/2014 OF THE HONOURABLE HIGH COURT.**

**EXT.P12: PHOTOSTAT COPY OF THE PAYMENT RECEIPTS DATED 13/12/2014,
13/12/2014 AND 19/01/2014.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 7325 of 2015 (M)

.....
Dated this the 9th day of March, 2015

JUDGMENT

The petitioner has approached this Court challenging the action taken by the respondent Bank under Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', in proceeding against the properties, which were mortgaged to them by the 4th respondent, who is the son of the petitioner.

2. It is not the case of the petitioner that, the property in question is owned by her. The 4th respondent had mortgaged the property with the respondent Bank, and defaulted in repayment of the loan amount availed by him. When the Bank initiated recovery steps under the SARFAESI Act, the 4th respondent had approached this Court on two occasions. By Exts.P7 and P11 judgments, this Court had directed the respondent Bank to initially, consider the claim of the petitioner for the benefit of OTS facility, and later, granted the petitioner, the facility of payment by instalments. It is not in dispute that, the 4th respondent did not comply with the directions in the said judgment.

3. The case of the petitioner is that, the directions in Exts.P7 judgment were complied with by the petitioner and not by the 4th respondent, and even the amounts directed to be deposited in Ext.P11 judgment were partly paid by the petitioner. Be that as it may, I am of the view that, inasmuch as the borrower, namely, the 4th respondent, had already approached this Court twice and obtained orders for payment of the defaulted amounts in installments, and the said directions have not been complied with in totality, the present writ petition, which seeks substantially the same relief as already claimed in the earlier writ petitions, with the only difference that it is filed by the mother of the 4th respondent, does not require to be entertained by this Court in proceedings under Article 226 of the Constitution of India. Admittedly, the petitioner is not the owner of the property; Nor is she the borrower or guarantor, against whom the proceedings by the respondent Bank have been initiated. I do not see any reason to entertain the present writ petition. The writ petition is therefore dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

