IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 7370 of 2015 (U)

PETITIONER:

GEORGE VYPANA ZACHARIAS, AGED 50 YEARS
S/O.JOY, VYPANA HOUSE,
PULIYANNOOR P.O.
KOTTAYAM DISTRICT.

BY ADVS.SRI.THOMSTINE K.AUGUSTINE
SRI.K.C.THOMAS (PALA)

RESPONDENT(S):

STATE BANK OF INDIA
PALA BRANCH, MAIN ROAD, PALA
KOTTAYAM - 686 575
REPRESENTED BY ITS AUTHORIZED OFFICER

BY SRI.K.K.CHANDRAN PILLAI SENIOR ADVOCATE
BY ADV. SMT.S.AMBILY, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vmr

WP(C).No. 7370 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1: TRUE COPY OF THE NOTICE DATED 3/10/2012 ISSUED BY THE RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE NOTICE DATED 7/5/2014 ISSUED BY THE RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 3/6/2014 IN WPC NO.13110/2014 OF THIS HON'BLE COURT.

EXHIBIT P4: TRUE COPY OF THE STATEMENT OF ACCOUNTS ISSUED BY THE RESPONDENT BANK FROM 3/12/2010 TO 13/5/2014.

EXHIBIT P5: TRUE COPY OF THE INVITATION CARD OF THE MARRIAGE OF PETITIONER'S DAUGHTER.

EXHIBIT P6:TRUE COPY OF THE NOTICE DATED 26/2/2015 ISSUED BY THE ADVOCATE COMMISSIONER.

EXHIBIT P7: ORIGINAL POSTAL COVER IN WHICH EXHIBIT P6 RECEIVED.

EXHIBIT P8: TRUE COPY OF THE CMP NO.427/2015 FILED BY THE RESPONDENT BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM.

RESPONDENT(S)' EXHIBITS : NIL
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/TRUE COPY/

P.A.TO JUDGE

vmr

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.7370 of 2015 (U)

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Dated this the 24th day of March, 2015

JUDGMENT

The petitioner has approached this Court, challenging the steps taken by the respondent Bank under Section 13(4) of the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', for recovery of defaulted loan amounts.

2. It is the specific case of the petitioner that, when steps were taken on a previous occasion, the petitioner had impugned the said steps taken by the respondent Bank in a writ petition, which was disposed by Ext.P3 judgment, directing the petitioner to pay the defaulted amounts in installments, along with the regular payment of EMIs. There was a further direction to the respondent Bank to regularise the account of the petitioner, on the petitioner paying the said defaulted installments. It is not in dispute that, pursuant to Ext.P3 judgment, the petitioner in fact paid the defaulted amounts in installments as directed by this Court. Thereafter, when there was a fresh default committed by the petitioner, the respondent Bank continued the original proceedings that they had initiated, pursuant to the previous default, by filing an application before the Chief Judicial Magistrate Court, Kottayam, in accordance with Section 14 of

SARFAESI Act. It is these proceedings that are impugned in the present writ petition.

3. I have heard Sri.Thomstine K.Augustine, the learned counsel for the petitioner and Sri.K.K.Chandran Pillai, the learned senior Senior standing counsel for the respondent Bank.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, inasmuch as it is not in dispute that, pursuant to Ext.P3 judgment, the petitioner had remitted the defaulted amounts in installments granted by this Court, and complied with the directions in Ext.P3 judgment, the petitioner had effectively regularised the loan amount at that point of time. By virtue of the judgment of this Court in **Elavakkattu Ceramics v. Authorised Officer, Standard Chartered Bank** **[2015 (1) KLT 419]**, on the petitioner paying the said defaulted installments and regularising the account, the account was no longer to be classified as an NPA. Thus, if there was a subsequent default that was committed by the petitioner in effecting repayment of the loan amount, then, the respondent Bank was required to initiate fresh proceedings under the SARFAESI Act, by treating the subsequent default as a fresh cause of action for the purposes of invoking the provisions of the SARFAESI Act. Admittedly, this

was not done in the instant case since, in Ext.P8 application that is filed by the respondent Bank before the Chief Judicial Magistrate Court, Kottayam, in 2015, reference is made to the Section 13(2) notice, that was issued in 2012. Thus, the action initiated against the petitioner, based on the S.13(2) notice that was issued at a time when the earlier default was committed by the petitioner, cannot be legally sustained. Resultantly, the writ petition, in its challenge against the steps taken by the respondent Bank and in particular Ext.P6 notice and Ext.P8 application before the Chief Judicial Magistrate Court, Kottayam, is allowed by quashing Exts.P6 and P8.

I make it clear that, in the event of the petitioner committing a default in repayment of the loan amounts in future, then, nothing in this judgment shall stand in the way of the respondent Bank initiating fresh steps in accordance with the provisions of the SARFAESI Act in respect of the said default.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/24/03/