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. 10649 OF 2013 (E)

PETITIONER(S) :

REKHA,
D/O.BALAKRISHNAN, RESIDING AT MANAKKAPARAMBIL HOUSE,
PANANCHERY, PATTIKKAD, THRISSUR DISTRICT, PIN-680 052.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT(S) :
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1. THE THRISSUR URBAN CO-OPERATIVE BANK LTD.,
POST BOX NO.86, HEAD OFFICE, MISSION QUARTERS,
THRISSUR, PIN- 680 001.

2. AUTHORISED OFFICER,
THE THRISSUR URBAN CO-OPERATIVE BANK LTD.,
POST BOX NO.86, HEAD OFFICE, MISSION QUARTERS,
THRISSUR, PIN- 680 001.

3. RADHAMANI.K.S,
W/O.SREEDHARAN, KATHIRAPPILLY HOUSE, PATTIKKAD.P.O,
PANANCHERY, MANAMKODE, PIN- 680 652.

R1 & R2 BY ADV. SRI.C.D.DILEEP, S.C
R3 BY ADV. SRI.V.C.MADHAVANKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Msd.

WP(C).No. 10649 of 2013 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **TRUE COPY OF THE POSSESSION NOTICE PUBLISHED IN MATHRUBHUMI DAILY DATED 22.11.2012.**

RESPONDENT(S)' EXHIBITS

EXHIBIT R3(A): **TRUE COPY OF THE ORIGINAL PETITION O.P.NO.755 OF 2013 ON THE FILE OF THE FAMILY COURT, THRISSUR DATED 16.02.2013.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 10649 of 2013 (E)

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Dated this the 5th day of March, 2015

JUDGMENT

The petitioner, who had obtained a loan of Rs.3,42,000/- from the 1st respondent Bank, defaulted in repayment of the same. Consequently, the respondent Bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', for taking possession of the secured asset, which is the property of the petitioner.

2. The facts in the writ petition would reveal that, the respondent Bank thereafter obtained physical possession of the secured asset, and subsequently put the property for sale in accordance with the provisions of the SARFAESI Act. It is also not in dispute that, the sale was conducted and confirmed. However, at a stage before the delivery of the property could take place, the petitioner approached this Court and obtained an interim order interdicting the conveyance. By an interim order dated 12.04.2013, the petitioner was directed to deposit a sum of Rs.7,25,000/- with the respondent Bank, which the respondent Bank was directed to keep in a suspense account, with the condition that the appropriation from the said account would be pursuant to further orders from this Court. Thereafter, attempts

were made for a settlement through mediation, but apparently the said attempts did not yield any positive result. The position as of today is that, the entire amount due to the respondent Bank, by way of recovery of the loan amount, has already been deposited by the petitioner with the respondent Bank. In that view of the matter, the petitioner who is the borrower and the owner of the secured assets has discharged his liability to the respondent Bank in respect of the loan amount. In his capacity as a mortgagor of the property, the petitioner has thus become entitled to redeem the property mortgaged by him as security for the loan.

3. The 3rd respondent, who is stated to be the auction purchaser, in whose favour the auction sale of the property was confirmed, no doubt, has a right to obtain a refund, of the amounts paid by him to the Bank as consideration for the sale, together with the interest that has accrued on the said amount.

4. Under these circumstances, I dispose the writ petition with the following directions :

   i. The respondent Bank shall appropriate the amount, deposited by the petitioner with the Bank pursuant to the directions of this Court, within a period of one week from today.

ii. The respondent Bank shall immediately thereafter, refund the amounts collected from the 3rd respodent towards sale consideration, with statutory interest accrued thereon, for the properties sold and confirmed in favour of the 3rd respondent. The Bank shall take steps to cancel the sale certificate issued in favour of the 3rd respondent simultaneous with the refund of amounts to the 3rd respondent.

iii. The respondent Bank shall return the title documents, pertaining to the property in question, to the petitioner, and put the petitioner back in possession of the property in question, within a period of three weeks from the date of receipt of a copy of this judgment.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/07/03/