IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 9022 of 2015 (C)

PETITIONER(S):

JAYALAL D., AGED 48 YEARS,
S/O.DIVAKARANPILLAI, THADASSERIL HOUSE, KOZHIMALA P.O.,
THIRUVALLA, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.SAJEEVKUMAR

RESPONDENT(S):

THE CHIEF MANAGER/AUTHORISED OFFICER,
THE FEDERAL BANK LTD., THOTTABHAGOM BRANCH,
GROUND FLOOR, MELEKAYIL BUILDING, THOTTABHAGOM P.O.,
KAVIYOOR, THIRUVALLA, PATHANAMTHITTA DISTRICT,
PIN - 689 541.

BY ADVS. SRI.A.ANTONY
SMT.LEELAMMA ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 9022 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE POSSESSION NOTICE 6 FROM COMMISSION ADVOCATE 13(2) OF THE SECURITISATION RECONSTRUCTION OF FINANCIAL ASSETS & ENFORCEMENT SECURITY INTEREST ACT, 2002 DATED 23.02.2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.9022 of 2015 (C)

..

Dated this the 9th day of April, 2015

JUDGMENT

The petitioner, who had availed of a Cash Credit facility from the 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 recovery of the loan amounts.

2. In the writ petition, the petitioner, after narrating the sequence of events with regard to the taking of the loan, has averred that, at the instance of the respondents, an Advocate Commissioner was appointed pursuant to an order of the Chief Judicial Magistrate and it was likely that the petitioner would be dispossessed from the secured assets. Taking note of the said averments, as also the submissions made on behalf of the petitioner, this Court while issuing notice before admission to the respondent bank, also granted the petitioner an interim stay against dispossession till the next date of posting, by an order dated 23.03.2015.

3. When the petition was taken up today, it is brought to my notice by counsel for the respondent bank that the petitioner's wife had

already approached this court, on an earlier occasion, when the respondent bank had initiated steps for recovery of the defaulted loan amounts in the same account. It is relevant to note that, in the present writ petition, there is no mention with regard to the earlier writ petition, filed by the petitioner's wife, challenging the action of the respondent Bank in taking steps for recovery of the very same loan amount. Learned counsel for the respondent Bank would submit that,in the writ petition filed by the petitioner's wife (W.P.(C) No.21552 of 2014), this Court had by judgment dated 10.11.2014, permitted the petitioner's wife to clear the entire outstanding liability amount by way of ten equal monthly installments, the first of which was to be effected on or before 15.12.2014, followed by similar installments to be effected on or before the 15th of the succeeding months. It was made clear in the said judgment that if the petitioner therein committed any default in remitting the installments, the respondent Bank would be at liberty to proceed with further steps, for realisation of the entire amount in lump sum, from the stage where the proceedings then stood.

4. On going through the judgment of this Court, in the aforementioned writ petition preferred by the petitioner's wife, It is apparent that, the petitioner in the instant writ petition was

seeking to invoke the discretionary jurisdiction of this Court, by suppressing the fact that his wife had earlier approached this Court and already obtained a judgment that enabled her to repay the entire defaulted amount, in the loan account, in installments. On the aspect of suppression of material facts in writ petitions, a Division Bench of this Court in **Self Financing Para Medical Managements Association v. State of Kerala** [2014 (3) KLT 943] has observed as follows:

> “While on the subject, we might note that the writ jurisdiction is a discretionary jurisdiction. The insistence by the court on the applicants taking a court into confidence about the facts in a case is with a view to preserve the majesty of the court and to ensure that there is no abuse of the process of the court. While it is invariably the court which will decide as to whether any particular fact is material or not for the purposes of the lis before it, it is only when there is a finding with regard to suppression of material facts that the court may refuse the discretionary relief to the applicant. Essentially, what is frowned upon by the courts is the conduct of a party that is intended to distort the facts whereby the court is led to take a wrong decision. “

In my view, the present writ petition, which seeks the discretionary relief of this Court under Article 226 of the Constitution of India cannot be maintained at the instance of a person like the petitioner who chooses to suppress material facts from this Court, and further, has together with his wife, chosen not to comply with the directions issued by this court in the matter of repayment of defaulted amounts to the respondent bank. It is also my view that this is a fit case where, while dismissing the writ petition, costs have also to be imposed on the petitioner. Resultantly, I dismiss the writ petition as not maintainable. I also direct that the petitioner shall pay an amount of Rs.10,000/- by way of costs for having suppressed material facts in the writ petition. The said amount of Rs.10,000/- shall be added to the liability of the petitioner to the respondent Bank, and recovery steps initiated by the respondent Bank shall, henceforth, be for an amount that includes the aforementioned amount of Rs. 10,000/- as well.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

AMV/09/04/