IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).NO. 9168 OF 2015 (U)

PETITIONER(S):

BRAHMACHARI PRAKASH
5/49, MATHA AMRITHANANDAMAYI MATH
AMRITHAPURI, ALAPAD VILLAGE, KARUNAGAPPALLY, KOLLAM.

BY ADVS.SRI.R.KRISHNA RAJ
SRI.BIJITH S.KHAN

RESPONDENT(S):

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1. SYNDICATE BANK
REPRESENTED BY ITS CHIEF MANAGER (RECOVERY CELL)
SHANMUGHAM ROAD
KOCHI-682 031.

2. THE AUTHORISED OFFICER AND CHIEF MANAGER
SYNDICATE BANK ASSET RECOVERY MANAGEMENT BRANCH
VAKKACHAN TOWERS
CHITTOOR ROAD, VADUTHALA, KOCHI 682 023.

R1 & 2 BY ADV. SRI.R.S. KALKURA, SC, SYNDICATE BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 9168 OF 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - COPY OF THE AUCTION NOTICE DATED 23-7-2014

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.9168 of 2015

Dated this the 6th day of April, 2015

J U D G M E N T

The petitioner who is an auction purchaser of an item of property that was put up for sale by the respondent bank, pursuant to proceedings initiated under the SARFAESI Act for recovery of loan amounts from a borrower, is aggrieved by the inaction on the part of the respondent bank in completing the sale proceedings that were initiated, and in which the petitioner was identified as the successful bidder of the property. It is the case of the petitioner that pursuant to the sale conducted by the respondent bank, he was identified as the highest bidder, and he paid an amount of Rs.40 lakhs on the date of the auction sale, and thereafter, paid the balance sale consideration also within the time prescribed under the SARFAESI Act. It is also not in dispute that the sale has been confirmed in favour of the petitioner. The only thing that remains is the execution of the sale deed, and the case of the petitioner is that the respondent bank, for reasons best known to it, is not complying with the said requirement in favour of the petitioner.

2. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondent bank.

3. Counsel for the respondent bank would submit that the reluctance on the part of the bank, in going ahead with the sale proceedings, was the fact that the borrower had filed S.A.No.306 of 2014 before the Debt Recovery Tribunal, wherein, among other contentions, it is also stated that the property that was advertised for sale, is different from the mortgaged property, as the extent of the property shown in the notice of sale was much lesser than the actual extent of the property. Counsel for the respondent bank would submit, therefore, that the respondent bank apprehends that in the event of the S.A being decided in favour of the borrower, on the issue of legality of the auction sale, the entire proceedings may be set aside, and that is why they are reluctant to go ahead with the execution of the sale deed. He would submit, however, that although the Debt Recovery Tribunal had, initially, granted an interim order, against further proceedings under the SARFAESI Act for recovery of the loan amounts, it had subsequently, after noting that the borrower had not complied with the conditions for the stay, vacated the stay order and left it open to the respondent bank to continue with the sale proceedings. In that view of the matter,I do not see any reason for the respondent bank not to complete the sale proceedings, by executing the sale deed in favour of the person in whose favour the auction sale was confirmed. In the absence of any interim order of the Debt Recovery Tribunal

interdicting the respondent bank from doing so, there cannot be any reason for the respondent bank not to execute the sale deed in favour of the petitioner herein. Thus, without prejudice to the orders that may be passed by the Debt Recovery Tribunal in the S.A pending before it, the writ petition is disposed with a direction to the respondent bank to complete the sale proceedings initiated by the respondent bank, by executing the sale deed in respect of the property described in Ext.P1 sale notice, in favour of the petitioner, at the risk and cost of the petitioner.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns