IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 13529 of 2010 (M)

PETITIONER :

SIBICHAN ABRAHAM,POOVATHINAL,
AMPARANIRAPPEL, BHARANAGANAM P.O., PALA
KOTTAYAM.

BY ADVS.SRI.RAJU JOSEPH
SRI.GEORGE KUTTY MATHEW

RESPONDENTS :
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1. **THE NORTH MALABAR GRAMIN BANK, NMGB TOWERS, PALLIKKUNNU, KANNUR-4 REPRESENTED BY ITS GENERAL MANAGER.**

2. **THE AUTHORISED OFFICER,(GENERAL MANAGER) NMGB TOWERS, THE NORTH MALABAR GRAMIN BANK, PALLIKKUNNU, KANNUR-4.**

3. **THE BRANCH MANAGER, THE NORTH MALABAR GRAMIN BANK, PALA BRANCH, PALA.**

4. **P.J.THOMAS,PARACKAL, MOONILAVU PO, PALA.**

R1 TO R3 BY ADV. SRI.DEVAN RAMACHANDRAN
BY ADV. SRI.K.M.ANEESH
BY ADV. SRI.SANTHOSH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 13529 of 2010 (M)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF NOTICE UNDER SECTION 13(2) OF THE ACT DT 18.11.2009.

P2: COPY OF CERTIFICATE ISSUED BY THE AGRICULTURAL OFFICER, THIDANADU DT 24.3.2010.

P3: COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER DT 23/3/2010.

P4: COPY OF RECEIPT SHOWING PAYMENT OF BASIS TAX DT 23.3.2010.

RESPONDENT'S EXHIBITS :

EXT.R1(1): COPY OF THE PHOTOGRAPHS OF THE PETITIONER'S PROPERTY.

//TRUE COPY//

P.A. TO JUDGE

bp

C.K. ABDUL REHIM, J.

W.P.(C)No.13529 of 2010

Dated this the 4th day of March, 2015

JUDGMENT

An extent of 3.623 Hectares of land comprised in R.S.No.149 of Kandoor Village in Meenachil Taluk in Kottayam District belonging to the petitioner was mortgaged for securing a loan availed by the 4th respondent from the 1st respondent Bank, on 29/03/2008. Consequent to default committed by the 4th respondent in repaying the loan, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short) was initiated. Ext.P1 is the notice issued by the 2nd respondent under Section 13(2) of the SARFAESI Act. The petitioner is challenging the proceedings initiated under the SARFAESI Act on the basis that the secured asset, which is the property mortgaged, is an agricultural land cultivated with Rubber and Pineapple and that the same is not liable to be proceeded against under the SARFAESI Act, since it is exempted under Section 31 (i) of the Act. In support of the above contention the petitioner had produced Ext.P2 certificate issued by the Agricultural Officer, wherein it is certified that on a field verification it is found that there exists about 800 Nos. of 3 year old rubber seedlings and Pineapple cultivations. Ext.P3 possession certificate issued by the Village Officer would indicate that the property is a garden land.

2. In the counter affidavit filed on behalf of the respondents it is contended that, the property in question is a garden land and the petitioner had planted some Rubber saplings in some portions of the property, after creating the mortgage in favour of the Bank. According to the respondents, this was done by the petitioner with an intention of creating a defence in the nature as now contended, against the action under the SARFAESI Act. The respondents have produced Ext.R1 series photographs to indicate that there is no such cultivation in the property in question. It is also contended that the petitioner is conducting a quarry in the mortgaged

property and is getting substantial income out of that.

3. Whether the secured asset is an agricultural land exempted under Section 31(i), is a question which can be adjudicated only based on evidence on factual aspects. Basically there exists a dispute between the parties with respect to the said factual aspects. The nature of the property as it existed on the date of mortgage is the crucial aspect to be considered. This court is of the opinion that a proper decision in this regard would require appreciation of evidence, both documentary and oral. Therefore this court is not in a position to adjudicate the matter in order to arrive at any conclusion with respect to the challenges raised. Moreover, it is to be noted that the petitioner has got an effective statutory remedy against the action initiated, before the Debt Recovery Tribunal, as contemplated under Section 17 of the SARFAESI Act.

4. Learned Senior Counsel appearing for the petitioner submitted that the 1st respondent Bank had

already filed an application before the Debt Recovery Tribunal as OA No.54/2011, seeking recovery of the amounts due by invoking provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. It is noticed that the actions under the SARFAESI Act has now been kept pending based on interim orders passed by this court.

5. Since it is already found that this court cannot adjudicate on the question of sustainability of the action under the SARFAESI Act, the petitioner should be left to seek appropriate remedy before the statutory authority. However, it is observed that, since Ext.P1 notice was issued in the year 2009 the respondents 1 and 2 shall not proceed on the basis of the said notice. A fresh notice under Section 13(2) shall be issued in case the Bank is intending to pursue any action under the SARFAESI Act. Needless to observe that if any such action is taken the petitioner will be at liberty to challenge the same by invoking remedy provided under Section 17 of the

SARFAESI Act.

The above writ petition is dismissed subject to liberty reserved as mentioned herein above.

Sd/- **C.K. ABDUL REHIM**
JUDGE

MJL