IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No.9858 of 2015 (F)

PETITIONER:

MANOHARAN.N.,AGED 45 YEARS,
S/O.NARAYANAN PILLAI,THACHANVILA PUTHENVEEDU,
THIRUMALA,THIRUVANANTHAPURAM - 695 006.

BY ADVS.SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP

RESPONDENTS:
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1. **THE AUTHORISED OFFICER/CHIEF MANAGER,**
SYNDICATE BANK,REGIONAL OFFICE,
THIRUVANANTHAPURAM.

2. **GEETHA KUMARI,W/O.MANOHARAN,**
THACHANVILA PUTHENVEEDU,THIRUMALA,
THIRUVANANTHAPURAM - 695 006.

R1 BY SRI.R.S.KALKURA, SC, SYNDICATE BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.9858 of 2015 (F)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE COPY OF REQUEST DATED 08.11.2013 MADE BY PETITIONER FOR ONE TIME SETTLEMENT.

EXHIBIT P2:TRUE COPY OF NOTICE DATED 16.07.2014 UNDER SECTION 13 (2) OF SARFAESI ACT.

EXHIBIT P3:TRUE COPY OF REPLY DATED 12.09.2014 BY PETITIONER TO 1ST RESPONDENT BANK.

EXHIBIT P4:TRUE COPY OF COMPLAINT DATED 26.02.2014 BEFORE BANKING OMBUDSMAN.

EXHIBIT P5:TRUE COPY OF COMMUNICATION DATED 10.03.2014 FROM BANKING OMBUDSMAN AS TO THE DISPOSAL OF COMPLAINT AS NOT MAINTAINABLE.

EXHIBIT P6:TRUE COPY OF STATEMENT OF ACCOUNT OBTAINED BY THE PETITIONER FROM BANK DATED 31.07.2014.

EXHIBIT P7:TRUE COPY OF REPRESENTATION DATED 09.02.2015 BY PETITIIONER BEFORE BANK.

EXHIBIT P8:TRUE COPY OF WARRANT DATED 19.01.2015 ISSUED BY CJM, THIRUVANANTHAPURAM.

EXHIBIT P9:TRUE COPY OF NOTICE DATED 19.02.2015 ISSUED BY ADVOCATE COMMISSIONER.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S TO JUDGE

pk

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.9858 of 2015

Dated this the 25th day of June, 2015

J U D G M E N T

The petitioner obtained a loan from the respondent Bank in the year 2008. The petitioner challenges 'SARFAESI' proceedings initiated by the Bank, in this writ petition.

2. The petitioner submits that, the amount reflected in the demand notice is not the actual amount due from him. It is also submitted that, by compounding the penal interest and outstanding, exorbitant demand is raised for the obvious reason that, the petitioner fell out with the Regional Manager.

3. The learned Standing Counsel for the Bank submits that, apart from availing the loan, the petitioner stood as guarantor to eight other loans and the Bank is entitled to demand the same also from the petitioner consequent upon default. It is further submitted that, the disputed question relating to the calculation of the amount cannot be decided by invoking power under Article 226 of the Constitution.

4. On adverting to the nature of the issues, I am of the view that, the petitioner can resort to an alternate remedy to decide upon his liability. As rightly pointed by the learned Standing Counsel for the Bank, this Court cannot invoke power under Article 226 of the Constitution, especially in the light various decisions rendered by the honourable Supreme Court, to adjudicate upon such issue,

parties should be relegated to DRT.

In that view of the matter, with liberty to the petitioner to challenge the 'SARFAESI' proceedings before the Debt Recovery Tribunal, this writ petition is disposed of. However to work out alternate remedy, all coercive proceedings against the petitioner shall be deferred for a period of one month from today.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV