

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937**

**WP(C).No. 10265 of 2015 (G)**  
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**PETITIONER(S):**  
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**ZOHARAH, AGED 52 YEARS,  
W/O.B.M.ABDUL KADAR,  
DOOR NO.3-34/11, DARUL ASHRAF BEERI,  
KOTEKAR, MANGALORE.**

**BY ADVS.SRIP.S.SUJETH  
SMT.M.R.REENA**

**RESPONDENT(S):**  
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**1.THE AUTHORIZED OFFICER  
SOUTH INDIAN BANK LTD.,  
REGISTERED OFFICE, P.B.NO.28,  
THRISSUR 680 001.**

**2.THE BRANCH MANAGER,  
SOUTH INDIAN BANK LTD.,  
MANGALORE BRANCH 575 001.**

**R BY SRI.K.K.JOHN,SC,SOUTH INDIAN BANK**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**W.P.(C).NO.10265/2015**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P1: COPY OF THE SALE PROCLAMATION NOTICE.**

**RESPONDENTS EXHIBITS: NIL.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C).NO.10265 OF 2015 (G)**  
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**Dated this the 1<sup>st</sup> day of April, 2015**

**J U D G M E N T**

The petitioner approached this Court aggrieved by the steps taken by the respondent bank under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for auctioning the mortgaged property pursuant to a default committed by the petitioner and her husband in repayment of the loan amounts.

2. When the matter was taken up for admission on 30.3.2015, it was pointed out by the learned counsel for the respondent bank that the petitioner's husband had approached this Court challenging the same auction proceedings through O.P.(DRT).No.108/2014, and this Court had, by judgment dated 9.1.2015, disposed the said petition directing that coercive steps pursuant to the sale notice be kept in abeyance till such time as the Recovery Officer of the DRT considered a petition that was filed by the husband of the petitioner in the instant writ petition, for excluding certain portions of the secured assets from the sale notice that was published by the respondent bank. It is

stated that the Recovery Officer has since passed an order in the said application, and it was thereafter that the respondent bank proceeded to hold the sale of the mortgaged property on 30.3.2015. Counsel for the petitioner in the instant writ petition would submit that the petitioner is living away from her husband, and she was not aware of the proceedings in O.P.(DRT).No.108/2014 before this Court. It is his contention that the respondent bank should be directed to proceed against the properties of her husband before proceeding against her property, which is also mortgaged with the respondent bank, for realisation of the loan amounts. It is also pointed out that the valuation done by the respondent bank in respect of her property is low and therefore the respondent bank should be directed to revalue the property.

3. I have heard the learned counsel for the petitioner as also the learned Standing counsel for the respondent bank.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar and in view of the fact that the petitioner's husband had already approached this Court seeking

identical reliefs, when this Court had directed the sale proceedings to be kept in abeyance till such time as an opportunity was afforded to the husband of the petitioner to have his application considered by the Recovery Officer of the DRT, and further, when it is not in dispute that the petitioner had ample opportunity to question the valuation of her property, at the time when the earlier sale was notified in the year 2009, the present writ petition cannot be maintained at the instance of the petitioner, who was aware of the proceedings initiated against her property by the respondent bank. Thus, I am not inclined to grant the reliefs prayed for in the writ petition. The writ petition fails, and is accordingly dismissed.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

prp