

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 11358 of 2015 (T)

PETITIONER(S) :

**SHIBU GEORGE, AGED 47 YEARS,
S/O.GEORGE, THAMARACHALIL HOUSE,
JANATHA ROAD, VYTTILA, KOCHI - 19.**

BY ADV. SRI.P.V.GEORGE(PUTHIYIDAM)

RESPONDENT(S) :

**STATE BANK OF TRAVANCORE,
STRESSED ASSETS RESOLUTION CENTRE,
ZONAL OFFICE, ERNAKULAM,
REPRESENTED BY ITS CHIEF MANAGER,
PIN - 682 016.**

**BY SRI.SANTHOSH MATHEW
BY SRI.SATHISH NINAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AMV

: 2 :

WP(C).No. 11358 of 2015 (T)

APPENDIX

PETITIONER(S) EXHIBITS :

**EXT.P1 : COPY OF THE ORDER DATED 03.07.2014 PASSED BY THE
CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM IN
C.M.P.NO.903/2014.**

**EXT.P2 : COPY OF THE JUDGMENT DATED 27.10.2014 PASSED BY THIS
HON'BLE COURT IN O.P.(CRL.) NO.141/2014.**

**EXT.P3 : COPY OF NOTICE DATED 17.03.2015 ISSUED BY ADVOCATE
COMMISSIONER.**

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

PA.TO JUDGE

AMV

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.11358 of 2015 (T)

.....
Dated this the 10th day of April, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 notice that was served on the petitioner by the Advocate Commissioner.

2. In the writ petition, the specific case of the petitioner is that, while pursuant to Ext.P1 order that was passed by the Chief Judicial Magistrate, an Advocate Commissioner had been appointed to take possession of the secured assets, by Ext.P2 judgment of this Court, the said order of the Magistrate was set aside, on finding that, the said order was passed pursuant to an affidavit that did not contain the material particulars as contemplated under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act',
3. It is the contention of the petitioner that, thereafter, while the Magistrate was expected to pass a fresh order, after granting a reasonable opportunity to the secured creditor, to file a proper affidavit as contemplated under the SARFAESI Act, the said Magistrate has not passed any fresh order and the Advocate Commissioner has, based on a file noting of the Magistrate, proceeded to issue Ext.P3 notice.

4. I have heard Sri.P.V.George, the learned counsel for the petitioner and Sri.Sathish Ninan, the learned standing counsel for the respondent Bank.

5. The learned standing counsel for the respondent Bank would submit that, his instructions are to the effect that, the respondent Bank had in fact filed a fresh affidavit as directed by this Court by Ext.P2 judgment. He is, however, not sure as to whether the Magistrate passed a detailed order in the matter. His information is that, only the endorsement in the order sheet, produced by the learned counsel for the petitioner, was made by the Magistrate Court.

6. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that, the endorsement made in the order sheet of the Magistrate Court, as produced by the learned counsel for the petitioner, cannot be said to be in compliance with the directions in Ext.P2 judgment of this Court. When it is the case of the respondent Bank that, they had filed a fresh affidavit, pursuant to Ext.P2 judgment, before the Magistrate Court, it would be incumbent upon the Chief Judicial Magistrate, to pass a detailed order, taking note of the contentions in the said affidavit, before appointing an Advocate Commissioner to take possession of the

secured assets. This not having been done in the instant case, I quash Ext.P3 notice and direct the Chief Judicial Magistrate, Ernakulam to pass a fresh order in the matter, after considering whether there is a requirement for appointing an Advocate Commissioner to take over the possession of the secured assets in the instant case. In doing so, the Magistrate shall consider the sufficiency of the affidavit filed before him, on behalf of the respondent Bank. The Magistrate shall endeavour to pass the order, as directed, within three weeks from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/10/04/