

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 15366 of 2014 (U)

PETITIONER(S):

- 1. M.V. SHAJI, AGED 40 YEARS,
S/O.LATE VELAYUDHAN, MANATHUPADATH,
PATHADIPALAM, SOUTH KALAMASSERY.**
- 2. KAMALAKSHY, AGED 72 YEARS,
W/O.LATE VELAYUDHAN, MANATHUPADATH,
PATHADIPALAM, SOUTH KALAMASSERY.**

**BY ADVS.SRI.B.PRAMOD,
SRI.JOSEPH RONY JOSE.**

RESPONDENT(S):

- 1. LORD KRISHNA BANK,
A REGISTERED SCHEDULED BANKING COMPANY,
HAVING ITS REGISTERED OFFICE AND
ADMINISTRATION AT KALOOR AND BRANCHES AT
ALUVA, PIN-683 101.**
- 2. HDFC BANK LTD., ALUVA BRANCH,
REPRESENTED BY MANAGER, PIN-683 101.**
- 3. THE DEBT RECOVERY TRIBUNAL,
(KERALA & LAKSHADWEEP),
ERNAKULAM, REP. BY ITS REGISTRAR, PIN-682 018.**
- 4. THE RECOVERY OFFICER,
THE DEBT RECOVERY TRIBUNAL
(KERALA & LAKSHADWEEP), ERNAKULAM-682 018.**
- 5. RATHEESH M.N., S/O.NARAYANAN, MALIYIL, 7,
CHIRAYAM, ALANGAD, ALUVA, ERNAKULAM,
PIN - 683 511.**
- 6. RAMAKRISHNA BODY BUILDERS,
PATHADIPALAM, SOUTH KALAMASSERY,
CHANGAMPUZHA P.O., KOCHI-682 033.**

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**7. K.R. SAJAN, AGED 42 YEARS, SOLE PROPRIETOR,
RAMAKRISHNA BODY BUILDERS, PATHADIPALAM,
SOUTH KALAMASSERY, CHANGAMPUZHA P.O., KOCHI-33.**

**R2 BY ADVS. SRI.T.RAJESH, SC,
SRI.B.JAYASANKAR.
R5 BY ADVS. SRI.S.DILEEP (KALLAR),
SRI.PEEYUS A.KOTTAM.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 - TRUE COPY OF THE PLAINT IN O.S.NO.39/1999 BEFORE THE SUB COURT, ERNAKULAM.
- EXT.P2 - TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS AND 6TH AND 7TH RESPONDENTS IN OS NO.39/1999 BEFORE THE SUB COURT, ERNAKULAM.
- EXT.P3 - TRUE COPY OF THE WITHDRAWAL MEMO FILED BY THE COUNSEL FOR PETITIONERS AND THE RESPONDENTS 6 AND 7.
- EXT.P4 - TRUE COPY OF THE JUDGMENT DATED 03-03-2000 IN OS NO.39/1999 BEFORE THE SUB COURT, ERNAKULAM.
- EXT.P5 - TRUE COPY OF THE DECREE DATED 03-03-2000 IN OS NO.39/1999 BEFORE THE SUB COURT, ERNAKULAM.
- EXT.P6 - TRUE COPY OF THE MEMORANDUM IN OA NO.6/2005 BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM.
- EXT.P7 - TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS AND 6TH AND 7TH RESPONDENTS.
- EXT.P8 - TRUE COPY OF THE ORDER DATED 10-06-2005 IN OA NO.6/2005 BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM.
- EXT.P9 - TRUE COPY OF THE PROCLAMATION DATED 28-10-2013.
- EXT.P10 - TRUE COPY OF THE JUDGMENT DATED 16-12-2013 IN OP(DRT)NO.4444/2013.
- EXT.P11 - TRUE COPY OF THE AUCTION REPORT DATED 24-02-2014 PREPARED BY THE 5TH RESPONDENT.
- EXT.P12- TRUE COPY OF THE ORDER OF CONFIRMATION DATED 22/09/2014 PASSED BY THE 4TH RESPONDENT.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.15366 OF 2014

Dated this the 2nd day of February, 2015

J U D G M E N T

The petitioners, who are guarantors to the overdraft facility that was extended to the 6th respondent by the 1st respondent bank, had approached this Court, through OP (DRT) 4444/2013, when faced with a decree passed by the Sub Court, Ernakulam, in O.S.No.39 of 1999. By Ext.P10 judgment, this Court took note of the fact that the suit had been decreed as early as on 03.03.2000 and had become final. It was also noted that more than eight years had elapsed since the Debt Recovery Tribunal issued a debt recovery certificate to the respondent bank in O.A.No.6 of 2004. It was found therefore, that the petitioners had an alternate remedy by way of an appeal under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and there was no scope for approaching this Court through the O.P (DRT). Accordingly by Ext.P10 judgment, this Court had declined jurisdiction on that occasion and dismissed the original petition.

2. The present writ petition is filed by the petitioners who are the guarantors to the loan extended to the 6th respondent. The

petitioners, who were also parties in the O.P (DRT) that was disposed by Ext.P10 judgment, have not thought it fit to prefer an appeal, against the debt recovery certificate issued to the respondent bank in O.A.No.6 of 2004, before the Debt Recovery Appellate Tribunal. Instead, they have chosen to prefer this writ petition seeking to quash Exts.P4 judgment and P5 decree as well as Ext.P8 order of the Sub Court, Ernakulam, and Debt Recovery Tribunal respectively. In view of the express terms of Ext.P10 judgment, which relegated the petitioners to an alternate remedy against the orders of the Debt Recovery Tribunal, I am of the view that the present writ petition cannot be maintained at the instance of the petitioner.

3. Resultantly, the writ petition is dismissed as not maintainable.

Counsel for the petitioner would submit that during the pendency of the present writ petition, there was an interim order keeping in abeyance the delivery of the property to the auction purchaser. It is prayed that the said interim order be continued for a period of two weeks so as to enable the petitioners to pursue the remedies before the Debt Recovery Appellate Tribunal. Taking note of this submission on behalf of the petitioners, I direct that the

operation of the interim order, keeping the delivery of the property in abeyance, shall continue for a period of two weeks from today. On the expiry of the said period of two weeks, the interim order shall cease to be in force.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

