IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 16871 of 2015 (H)

PETITIONER(S) :

MOHAMMED BASHEER, AGED 54 YEARS,
S/O.KUNJU MUHAMMED, PALLATHUKADAVIL HOUSE,
SREEMOOLANAGARM P.O., ERNAKULAM.

BY ADVS.SRI.BABU CHERUKARA
SRI.JEEMON JOHN
SMT.ROSAMMA MATHEW
SRI.ANZAR BASHEER
SRI.PRATHEUSH.M.ANAND
SRI.P.ANTO THOMAS
SRI.K.S.GIREESAN

RESPONDENT(S) :
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1. AUTHORISED OFFICER,
CANARA BANK, PERUMBAVOOR, CHEMMANAM SQUARE, PIN- 683 542.

2. THE MANAGER,
CANARA BANK, PERUMBAVOOR BRANCH, CHEMMANAM SQUARE,
PERUMBAVOOR, ERNAKULAM, PIN- 683 542.

3. M/S.HYCON ADHESIVES,
11/349/A, EDAVOOR P.O., OKKAL
REPRESENTED BY ITS MANAGING PARTNER K.U.SHIHAB,
S/O.USMAN, AGED 37 YEARS, KATTETH HOUSE, EDAVOOR P.O.,
OKKAL, PERUMBAVOOR, PIN- 683 544.

4. M/S.ALIF WATER PROFILES,
X/114 B, SOUTH EZHIPPURAM, SOUTH VAZHAKULAM P.O.,
ERNAKULAM, PIN- 683 105,
REPRESENTED BY ITS PROPRIETOR, K.U.SHIHAB, S/O.USMAN,
AGED 37 YEARS, KATTETH HOUSE, EDAVOOR P.O., OKKAL,
PERUMBAVOOR, PIN- 683 544.

R1 & R2 BY ADVS. SRI.V.M.KURIAN
SRI.PAULY MATHEW MURICKEN, S.C

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 16871 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE PHOTOCOPY OF THE POWER OF ATTORNEY DEED DATED 05/03/2013.

P2: TRUE PHOTOCOPY OF THE GUARANTEE AGREEMENT DATED 28/03/2013 FOR A SUM OF RS.96 LAKHS

P3: TRUE PHOTOSTAT COPY OF GUARANTEE AGREEMENT DATED 07/05/2013 FOR A SUM OF RS.8,25,000/-

P4: TRUE PHOTOSTAT COPY OF THE LETTER DATED 28/03/2013 BY THE ALLEGED POWER OF ATTORNEY HOLDER MR.K.U.SHIHAB TO THE 2ND RESPONDENT.

P5: TRUE PHOTOSTAT COPY OF THE LAWYER NOTICE DATED 02/05/2015.

P6: TRUE PHOTOSTAT COPY OF THE SALE NOTICE ISSUED UNDER S.13(4) OF THE SARFEAST ACT RECEIVED BY THE PETITIONER WITH RESPECT TO THE LIABILITY OF HYCON ADHESIVES FOR A SUM OF RS.1,25,85,135.59/- DATED 29/04/2015.

P7: TRUE PHOTOSTAT COPY OF THE SALE NOTICE UNDER S.13(4) OF THE SARFEASI ACT RECEIVED BY THE PETITIONER WITH RESPECT TO M/S ALIF WATER PROFILES DATED 29/04/2015.

P8: TRUE PHOTOSTAT COPY OF THE CRIMINAL COMPLAINT DATED 11/05/2015 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1 AT PERUMBAVOOR.

P9: TRUE PHOTOSTAT COPY OF THE F.I.R NO.2051/2015 DATED 12/05/2015 OF PERUMBAVOOR POLICE STATION.

P10: TRUE PHOTOSTAT COPY OF THE LAWYER NOTICE DATED14/05/2015 TO THE 1ST AND 2ND RESPONDENTS.

P11: TRUE PHOTOSTAT COPY OF THE REPLY NOTICE DATED 16/05/2015 RECEIVED FROM CANARA BANK REGARDING THE LOAD TRANSACTION OF ALIF WATER PROFILES.

P12: TRUE PHOTOSTAT COPY OF THE ANOTHER REPLY NOTICE DATED 16/05/2015 RECEIVED FROM CANARA BANK REGARDING THE LOAN TRANSACTION OF ALIF WATER PROFILES.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

Msd.

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 16871 of 2015

Dated this the 16th day of June,2015

J U D G M E N T

The petitioner is a guarantor for the loan availed by the party respondents from the respondent bank. The petitioner approached this Court when sale notice was issued proposing the sale of the petitioner's property. The petitioner submits that his property do not form part of the secured asset. On 5.6.2015, the following orders was passed by this Court

> "There shall be an interim order to the effect that bank shall not proceed against the property belongs to the petitioner. However, this will not stand in the way of bank to proceed against respondents 3 and 4."

2. It submitted by the learned counsel for the bank that the sale could not be materialised. Therefore, petitioner's grievance can only be highlighted only when a fresh sale notice is issued.

3. I am of the view, before proceedings for sale, the bank shall consider whether the property of the

respondents 2 and 3 can be proceeded for sale. In the event, the bank is unable to raise the entire amount from the sale of the property belonged to respondents 2 and 3, the bank is free to proceed against petitioner's property, if so warranted. Appropriate decision shall be taken by the bank and communicate the same to the petitioner. The petitioner's case is that property do not form part of the secured asset is left open.

The writ petition is disposed of as above.

Sd/

A.MUHAMED MUSTAQUE,
JUDGE

jm/

The words "respondent No.2" occurring in the 1st and 3rd lines at page 2 of the judgment dated 16/06/2015 in W.P.(C) No.16871/2015 are corrected and substituted as respondent No.4" vide order dated 13/07/2015 in I.A.9253/2015.

Registrar (Judicial)