

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 17394 of 2015 (Y)

PETITIONER(S):

1. P.V.JOHN, S/O.VARKEY,
PUNNAMATTATHIL HOUSE, MUNDAKKAYAM POST,
KOTTAYAM.
2. THANKAMMA JOHN,
W/O.P.V.JOHN, PUNNAMATTATHIL HOUSE, MUNDAKKAYAM POST,
KOTTAYAM.
3. JOJI VARGHESE P. JOHN,
S/O.P.V.JOHN, PUNNAMATTATHIL HOUSE, MUNDAKKAYAM POST
KOTTAYAM.
4. JYOTHI ANN JOHN,
D/O.P.V.JOHN, PUNNAMATTATHIL HOUSE, MUNDAKKAYAM POST
KOTTAYAM.
5. FR.BIJU.K.MATHAI,
KAVATTU HOUSE, KOMPANADU POST, KOTTAYAM DISTRICT.

BY ADVS.SRI.GEORGE POONTHOTTAM
SRI.SAJI VARGHESE KAKKATTUMATTATHIL

RESPONDENT(S):

1. THE AUTHORIZED OFFICER,
UNDER THE SARFAESI ACT, UCO BANK, CYRILS TOWERS,
RAILWAY STATION ROAD, NEAR COLLECTORATE,
KOTTAYAM-686 001.
2. BALASUBRAMONI,
S/O.NALLUTHEVAR, 26, 28/W-7,
KRISHNA VATHIYAR STREET, KAMAYAGOUNDANPATTI
UTHAMAPALAYAM TALUK, THENI DISTRICT, TAMILNADU STATE.
3. P.N.T.CHANDSRU
S/O.THIRUNAVUKARASU, 3/514, J.J.NAGAR
MUGAPER EAST, CHENNAI.

Msv/

WP(C).No. 17394 of 2015 (Y)

4. VIMALACHANDRU,
W/O.P.N.T.CHANDRU, 3/514, J.J.NAGAR,
MUGAPER EAST, CHENNAI.
5. B.AMARJOTHY,
W/O.N.BALASUBRAMONI, 26, 28/W-7,
KRISHNA VATHIYAR STREET, KAMAYAGOUNDANPATTI,
UTHAMAPALAYAM TALUK, THENI DISTRICT, TAMILNADU STATE.

R1 BY ADVS. SRI.DEEPAK JOY K.
SRI.GEORGE KARITHANAM VARGHESE,SC,UCO B

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 17394 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: A TRUE COPY OF THE NOTICE DATED 3.2.2015 ISSUED TO THE
PETITIONERS AND THE GUARANTORS.**

EXHIBIT-P2: A TRUE COPY OF THE REPLY BY THE PETITIONERS DATED 31.3.2015.

**EXHIBIT-P3: A TRUE COPY OF THE POSSESSION NOTICE BY THE 1ST RESPONDENT
DATED 19.5.2015.**

**EXHIBIT-P4: A TRUE COPY OF THE POSSESSION NOTICE BY THE 1ST RESPONDENT
DATED 19.5.2015.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 17394 of 2015

Dated this the 13th day of July, 2015

J U D G M E N T

Petitioners are the partners of M/s.Eden Cardamom Estate, a partnership firm. They approached this Court challenging initiation of SARFAESI proceedings in respect of collateral security offered by them for the loan advanced to the partnership firm.

2. The collateral security consists of a residential building. According to the petitioner, the primary security is the Cardamom Plantation. It is submitted that, respondents are bound to proceed against the primary security before initiating proceedings against the petitioner's residential building, which is given as a collateral security. It is further submitted that, there is no impediment under law in proceeding against Cardamom Plantation under SARFAESI Act as it is not an agricultural land.

3. Learned counsel for the Bank submits that, the Bank is entitled to proceed against both properties and Bank also has filed an Original Application as O.A. No.226/2015, before the DRT. He also submits that, without knowledge of the Bank, the petitioner had sold Cardamom Plantation to the party

respondents and Bank is entitled to proceed against all the properties in accordance with law.

4. I am of the view that, the substantial grievance of the petitioner can only be resolved through appropriate proceedings before the DRT. It is for the DRT to decide the manner in which the recovery has to be effected by the Bank. The DRT will have full control over the entire proceedings till finalisation.

In that view of the matter, this writ petition is disposed of with liberty to the petitioner to agitate this issue before the DRT. To work out the relief before the DRT, coercive steps against the petitioner shall be deferred for a period of 6 weeks.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

Pn