IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 17755 of 2015 (T)

PETITIONER :

G.MURUKESAN, AGED 46 YEARS,
S/O. GOPALAN ASARI, MURUKANIVAS, KURAMBALA MURI,
KURAMBALA VILLAGE, PANDALAM P.O- 689 501

BY ADV. SMT.ASHA ELIZABETH MATHEW

RESPONDENT(S):
----

1. **STATE BANK OF INDIA,**
   REP BY ITS REGIONAL MANAGER, KOLLAM-673 001

2. **MANAGER,**
   STATE BANK OF INDIA, KOTTARAKKARA BRANCH-688 101

3. **JOHNSON,**
   VADAKKEPARAMBIL, CHEMBUM PURAM MURI,
   NEDUMUDI VILLAGE (P.O), KUTTANADU TALUK,
   ALAPPUZHA DISTRICT-688 001

4. **AGRICULTURAL OFFICER,**
   KURAMBALA VILLAGE, PANDALAM P.O., PIN-689 501

R1 BY ADV. SRI.S.EASWARAN
SRI.R.S.KALKURA, SC, SBI
R4 BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 17755 of 2015 (T)
--

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: A TRUE COPY OF THE DOCUMENT DATED 21.1.2010 EXECUTED BY THE PETITIONER IN FAVOUR OF THE 1ST RESPONDENT

EXHIBIT P2: A TRUE COPY OF THE DRIVING LICENCE ISSUED TO THE PETITIONER ON 27.7.2013

EXHIBIT P3: A TRUE COPY OF THE CARD ISSUED BY THE BHARATH PETROLEUM CORPORATION LIMITED TO THE PETITIONER

EXHIBIT P4: A TRUE COPY OF THE CASH RECEIPT DATED 23/09/2014 ISSUED TO THE PETITIONER BY ASIANET SATELLITE COMMUNICATIONS LTD

EXHIBIT P5: A TRUE COPY OF THE ELECTION SLIP ISSUED TO THE PETITIONER DURING THE LOK SABHA ELECTION, 2014

EXHIBIT P6: A TRUE COPY OF THE COMMISSIONER'S REPORT IN OS NO.512/2014 OF THE MUNSIFFS COURT, ADOOR

RESPONDENT(S)' EXHIBITS

EXHIBIT R1(A): COPY OF THE LETTER OF CONFIRMATION DATED 24/8/2011 EXECUTED BY THE 3RD RESPONDENT

EXHIBIT R1(B): COPY OF THE DEMAND NOTICE DATED 29/9/2014 ISSUED UNDER SECTION 13(2) OF THE SECURITIZATION ACT BY THE BANK.

EXHIBIT R1(C): COPY OF THE POSSESSION NOTICE DATED 5/12/2014 ISSUED UNDER SECTION 13(4) OF THE SECURITIZATION ACT BY THE BANK

EXHIBIT R1(D): COPY OF THE ORDER DATED 29/11/2014 IN I.A.NO.2468 OF 2014 IN O.S.NO.512 OF 2014 OF THE MUNSIFF COURT, ADOOR

EXHIBIT R1(E): COPY OF THE PLAINT IN O.S.NO.512 OF 2014 ON THE FILE OF THE MUNSIFF COURT, ADOOR

EXHIBIT R1(F): COPY OF THE OBJECTION FILED TO I.A.NO.2468 OF 2014 IN O.S.NO.512 OF 2014 BY THE BANK

EXHIBIT R1(G): COPY OF THE WRITTEN STATEMENT FILED IN O.S.NO.512 OF 2014 BY THE BANK

EXHIBIT R1(H): COPY OF THE ORDER DATED 10/4/2015 IN I.A.NO.2468 OF 2014 IN O.S.NO.512 OF 2014.

/TRUE COPY/

sts **P.A.TO JUDGE**

A.MUHAMED MUSTAQUE, J.

****

W.P.(C) No.17755 of 2015

****

Dated this the 11th day of August, 2015

JUDGMENT

The petitioner has approached this Court challenging SARFAESI proceedings.

2. Admittedly, the petitioner is not the borrower from the respondent Bank. The borrower is the third respondent in this writ petition. The petitioner raised a civil dispute questioning the right of the third respondent in mortgaging the property with the Bank for availing the loan. According to the petitioner, the title vested exclusively with the petitioner and he is in possession of the secured assets. He filed a suit before the Munsiff's Court, Adoor in O.S.No.512/2014. In the suit, he obtained ad-interim injunction. This order was vacated on 10.4.2015.

3. The petitioner approached this Court stating that the property is an agricultural property and therefore, it cannot be proceeded under the SARFAESI Act.

4. Learned counsel for the Bank submits that the petitioner has no locus standi to file this writ petition. Therefore, the writ petition is liable to be dismissed.

5. A third party to a loan agreement cannot question the initiation of the SARFAESI proceedings based on the exemption from the purview of the SARFAESI Act. What is agitated by the petitioner is regarding the title belongs to him. This is an independent right available to the third party. Whether the petitioner is entitled for an injunction against the proceedings is a different issue to be considered by the civil court. The petitioner is not being the borrower, necessarily, based on the admission of the pleadings is not bound by the proceedings under the SARFAESI Act. The paramount claim of the petitioner is based on the title and not based on the nature of the property. The term of the loan agreement would govern only between the Bank and the borrower. The purpose of the loan agreement would govern the borrower and the Bank and not the third party. Therefore, the petitioner cannot question the SARFAESI proceedings based on the nature of the land as the petitioner has no relation with the loan agreement. Thus, the petitioner's challenge based on the nature of the land, according to me, is misconceived and unsustainable.

6. The petitioner has an independent right if at all available to challenge the proceedings is based on title. Rightly, the petitioner has approached the civil court and the civil court declined injunction.

7. Learned counsel for the petitioner submits that the petitioner is preferring an appeal against injunction order.

In that view of the matter, with liberty to the petitioner to seek appropriate relief in the civil court and in the appeal, this writ petition is disposed of. To enable the petitioner to work out the relief before the civil court, coercive steps shall be deferred for a period of one month from today.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

ln