

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937**

**WP(C).No. 18184 of 2015 (W)**  
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**PETITIONER :**  
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**M.K.SIRAJ, S/O.MOYTHU HAJI, AGED 46 YEARS,  
ROYAL ROSE HOUSE, EDAKKAD,  
WEST HILL P.O., PUTHIYANGADI VILLAGE,  
KOZIKODE DISTRICT - 673 005.**

**BY ADV. SRI.C.P.MOHAMMED NIAS**

**RESPONDENTS:-**  
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- 1. FEDERAL BANK LTD.,  
REPRESENTED BY ITS CHIEF MANAGER, ZONAL OFFICE,  
THALAYOLAPARAMBA, KOTTAYAM - 686 006.**
- 2. THE AUTHORISED OFFICER,  
ASSET RECOVERY BRANCH, FEDERAL BANK LTD.,  
S.H.MOUNT P.O., KOTTAYAM - 686 006.**
- 3. P.E.NASSAR,  
S/O.MUHAMMED IBRAHIM, AGED 54 YEARS,  
RESIDING AT THALAYOLAPARAMBAKARA,  
THALAYOLAPARAMB P.O., VADAYAR VILLAGE,  
VAIKOM TALUK, KOTTAYAM - 686 505.**
- 4. NAZIYA NASSER, W/O.P.E.NASSAR, AGED ABOUT 43 YEARS,  
RESIDING AT THALAYOLAPARAMBAKARA,  
THALAYOLAPARAMB P.O., VADAYAR VILLAGE, VAIKOM TALUK,  
KOTTAYAM - 686 505.**

**R2 BY ADV. SRI.A.ANTONY  
SMT.LEELAMMA ANTONY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**sts**

**WP(C).No. 18184 of 2015 (W)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- EXHIBIT P1. TRUE COPY OF DOCUMENT NO.2556/2010 EXECUTED BY THE 3RD RESPONDENT IN FAVOUR OF THE PETITIONER AND REGISTERED AT THE SUB REGISTRAR'S OFFICE, THALAYOLAPARAMBA.**
- EXHIBIT P2. TRUE COPY OF THE DOCUMENT NO.2882/1996 EXECUTED IN FAVOUR OF THE 3RD RESPONDENT AND REGISTERED AT SUB REGISTRAR'S OFFICE, THALAYOLAPARAMBA.**
- EXHIBIT P3. TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER, VADAYAR VILLAGE IN FAVOUR OF THE PETITIONER ACKNOWLEDGING RECEIPT OF LAND TAX FOR THE YEAR 2013-2014.**
- EXHIBIT P4. TRUE COPY OF THE LETTER DATED 02.05.2015 SENT BY THE PETITIONER TO THE 1ST AND 2ND RESPONDENTS.**
- EXHIBIT P5. TRUE COPY OF THE ENCUMBRANCE CERTIFICATE FOR THE PERIOD 01.01.2009 TO 27.05.2010 ISSUED TO THE PETITIONER.**
- EXHIBIT P6. TRUE COPY OF THE REPLY LETTER DATED 04.05.2015 SENT BY THE 1ST RESPONDENT TO THE PETITIONER.**
- EXHIBIT P7. TRUE COPY OF THE NOTICE OF SALE PUBLISHED AT THE INSTANCE OF THE 2ND RESPONDENT.**

**RESPONDENT(S)' EXHIBITS:**  
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**NIL**

**/TRUE COPY/**

**P.A.TO JUDGE**

**sts**

**A.MUHAMED MUSTAQUE, J.**

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**W.P.(C) No.18184 of 2015**

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Dated this the 7<sup>th</sup> day of August, 2015

**JUDGMENT**

The petitioner claims to be a *bonafide* purchaser from the party respondents. He approached this Court challenging sale proceedings initiated by the Bank to recover the loan amount from the party respondents under the SARFAESI Act.

2. It is submitted by the learned counsel for the Bank that the sale has not taken place for want of buyers.

3. The petitioner also seeks a prayer that in case, excess amount is received from the sale, that shall be returned to the petitioner. It is to be noted that the petitioner has no crystalized right to claim for any excess amount. If the petitioner approaches any competent civil court and obtain an order, necessarily, the Bank will have to honour such direction.

Therefore, leaving open that issue, this writ petition is disposed of. The petitioner is at liberty to recover any amount from the party respondents in the event of sale in the manner as indicated above.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**