IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C).No. 18201 of 2015 ()

PETITIONER :

SRI. THRIDEEP, AGED 52 YEARS,
S/O.SIVADASAN, DILEEP BHAVAN, KUNNIKODU MURI,
VILAKKUDY VILLAGE, PATHANAPURAM, KOLLAM.

BY ADV. SRI.SAJU J PANICKER

RESPONDENTS:-

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1. THE AUTHORIZED OFFICER, UNION BANK OF INDIA,
   REPRESENTED BY ITS CHIEF MANAGER, REGIONAL OFFICE,
   UNION BANK BHAVAN, M.G.ROAD, STATUE JUNCTION,
   THIRUVANANTHAPURAM - 695 001.

2. THE BRANCH MANAGER,
   UNION BANK OF INDIA, PATHANAPURAM P.O.,
   KOLLAM - 691 001.

3. SRI.SANTHOSH KUMAR,S/O.SOMAN NAIR,
   SANTHOSH BHAVAN, CHEKAM MURI,PIDAVOOR P.O.,
   PIDAVOOR VILLAGE, PATHANAPURAM,
   KOLLAM - 691 001.

R1 & R2 BY SRI.A.S.P.KURUP, SC, UBI
R3 BY ADVS. SRI.K.SIJU
SRI.A.MUHAMMED RAFFI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 18201 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS
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EXHIBIT P1. THE TRUE COPY OF THE ORDER DATED 14.11.2014 IN C.M.P NO.9167/2014 OF THE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM.

EXHIBIT P2. THE TRUE COPY OF THE CERTIFICATE ISSUED FROM REGIONAL CANCER CENTRE, THIRUVANANTHAPURAM.

EXHIBIT P3. THE TRUE COPY OF JUDGMENT IN W.P.(C).NO.6380/2015.

RESPONDENT(S)' EXHIBITS
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EXHIBIT R3(A). TRUE COPY OF THE SALE DEED EXECUTED BY THE PETITIONER IN FAVOUR OF THE 3RD RESPONDENT BY VIDE SALE DEED NO.405/2010 OF PUNALUR SRO.

EXHIBIT R3(B). TRUE COPY OF THE PLAINT IN O.S.NO.76/2011 DATED 18/2/2011

EXHIBIT R3(C). TRUE COPY OF THE EX-PARTE JUDGMENT PASSED BY THE MUNSIFF COURT, PUNALUR IN O.S.NO.76/2011 DATED 2/8/2011

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.18201 of 2015

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Dated this the 31st day of July, 2015

JUDGMENT

The petitioner and third respondent have a dispute regarding title of the secured asset. The secured asset is now in possession of the Bank. The petitioner approached this Court expressing his willingness to clear the liability to the Bank. The third respondent also expressed that he is willing to clear the liability to the Bank.

2. This Court has now seized of the issue relating to the SARFAESI proceedings. In the event of non-payment of the liability, the secured asset will be sold by the Bank to recover the loan amount. This Court cannot decide upon the right of the petitioner or the third respondent. Admittedly, the third respondent is the borrower. The petitioner submits that the secured asset be remained as intact till the dispute is resolved through the civil court.

3. The civil court cannot entertain any issue relating to the SARFAESI proceedings. The third respondent submits that in the event, this Court allows the petitioner to discharge the entire

liability, that would affect his right, which is being agitated before the civil court. The question now is relating only to protect the property for the purpose of adjudication between the petitioner and the third respondent. There is no dispute regarding the liability to be discharged with the Bank.

4. In such circumstances, this Court is of the view, it is open for the petitioner or the third respondent to discharge the liability and whatever be the payment effected before the Bank that would depend upon the decision of the civil court. However, in order not to create any other hurdle in the matter of adjudication, this Court is of the view, the liability of the Bank could be discharged as follows:

i. The petitioner, in view of the expressed willingness to pay the amount, he is permitted to discharge the entire liability of Rs.6,75,000/- in the following manner:

a. The petitioner shall deposit Rs.2 lakhs within two weeks and thereafter, the entire amount within two months.

ii. The Bank shall not sell the property till the reliefs are worked out.

iii. Any payment effected by the petitioner will not confer any title or interest over the property.

iv. The title or interest over the property, necessarily, has to be decided by the civil court.

v. The petitioner also cannot claim refund of the amount paid voluntarily to the Bank.

vi. If at all the petitioner is entitled to the amount, he can only claim the amount from the third respondent based on the decision of the civil court.

vii. However, this will not preclude from the third respondent also discharging the entire liability to the Bank within the time indicated above.

viii. If the third respondent also discharges the liability within the stipulated time, the Bank shall also credit the amount to the loan account.

ix. Whatever be the payment effected either by the petitioner and the third respondent would depend upon the decision of the civil court.

x. The Bank need not release the title deed of the property unless otherwise ordered by the civil court.

xi If the petitioner deposits Rs.2 lakhs as above, movables taken into custody by the Bank shall be released to the petitioner on executing a proper acknowledgment.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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