IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 18293 of 2015 (J)

PETITIONER:

ABDUL KHADER, S/O MUHAMMED,
ERANDAKKATTIL HOUSE, ARIYANNOOR VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADVS.SRI.SANTHOSH P.PODUVAL,
SMT.R.RAJITHA,
SMT.VINAYA V.NAIR.

RESPONDENTS:
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1. THE MANAGER,
PNB HOUSING FINANCE LTD., 48/5559 C, IST FLOOR,
RP ARCADE, NEAR GOLD SOUK MALL, PONNURUNNI,
VYTTILA, ERNAKULAM-682 019.

2. THE AUTHORISED OFFICER,
PNB HOUSING FINANCE LTD., 48/5559 C, 1ST FLOOR,
RP ARCADE, NEAR GOLD SOUK MALL PONNURUNNI,
VYTTILA, ERNAKULAM-682 019.

3. SUMESH THILAKAN, ERANDAKATTIL HOUSE,
KARIYANNUR, ERUMAPETTY. P.O.,
THRISSUR-680 584.

4. ANIE SUMESH, W/O.SUMESH,
ERANDAKATTIL HOUSE, KARIYANNUR,
ERUMAPETTY. P.O, THRISSUR-680 584.

R1 & R2 BY ADVS. SRI.JACOB CHACKO,
SRI.MATHEWS JOSEPH,
SRI.C.A.JOJO,
SRI.BIJI MATHEW.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 18293 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 TRUE COPY OF THE LETTER DATED 25/02/2015 ISSUED BY THE 2ND RESPONDENT.

EXT.P2 TRUE COPY OF THE NOTICE DATED 11/05/2015 UNDER SEC.13(4) OF THE SARFAESI ACT.

EXT.P3 TRUE COPY OF THE REPRESENTATION DATED 15/05/2015 SUBMITTED BY THE PETITIONER.

RESPONDENT'S EXHIBITS:-

EXT.R1 COPY OF THE NOTICE ISSUED BY THE PETITIONER TO THE FIRST AND SECOND RESPONDENTS DATED 15/05/2015.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.18293 of 2015

Dated this the 25th day of June, 2015

<u>J U D G M E N T</u>

The petitioner approached this Court challenging 'SARFAESI' proceedings. Admittedly, the respondent institution has took over the possession of the secured asset.

2. The learned counsel for the petitioner submits that, the petitioner is prepared to clear the entire liability in eight equal monthly installments.

3. The learned counsel for respondents 1 and 2 submits that, the petitioner is a total stranger to the institution and the borrowers are respondents 3 and 4. Therefore, the petitioner has no *locus stadi*.

4. The learned counsel for the petitioner submits that, he is the actual owner of the property and he executed a mortgage deed in favour of the 3rd respondent. However, misrepresenting the petitioner, it appears that, the 3rd respondent obtained a sale deed and thereafter he obtained a loan from the 1st respondent.

5. When a third person consciously makes payment, it cannot be said that, it is a payment under mistake. Taking note of the contention of the respondent institution, the petitioner expressed his willingness to pay the amount. That be so, the petitioner cannot claim any refund from the respondent financial institution. Thus,

safeguarding the interest of the institution as well as the party respondents, this writ petition is disposed of with the following directions :

1. The petitioner is permitted to discharge the entire liability in eight equal monthly installments starting from 25.07.2015 onwards.
2. If the petitioner commits default in paying any one of the installments, the Bank is at liberty to proceed against the property in accordance with law.
3. In the event of petitioner discharges the entire liability, the all documents and possession of the property shall be returned to the borrower unless any competent Civil Court ordered otherwise.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV