IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 19376 of 2015 (V)

PETITIONER :

FRANCIS KIDANGAN
S/O.CHUMAR, KIDANGAN HOUSE, HOUSE NO.26/1429
ANCHERI P.O., OLLUR VILLAGE, THRISSUR.

BY ADVS.SRI.K.B.GANGESH
SMT.SMITHA CHATHANARAMBATH
SMT.ATHIRA A. MENON

RESPONDENTS/RESPONDENTS :
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1. AUTHORIZED OFFICER,
SOUTH INDIAN BANK LIMITED,
REGIONAL OFFICE, THRISSUR-680 001.

2. CHIEF MANAGER,
SOUTH INDIAN BANK LIMITED
REPRESENTED BY THE CHIEF MANAGER,
EAST FORT BRANCH, THRISSUR- 680 003.

3. ROSAMMA VARKEY,
W/O.LATE P.I. VARKEY,
ALAPPAT PALATHINGAL HOUSE
VARKEY BHAVAN, LOURDPURAM,
THRISSUR - 680 005.

4. ITTY @ RENJU @ RENJU VARKEY
S/O.LATE P.I. VARKEY, ALAPPAT PALATHINGAL HOUSE
VARKEY BHAVAN, LOURDPURAM, THRISSUR -,680 005.

R1& R2 BY SENIOR ADVOCATE SRI.K.K.CHANDRAN PILLAI
BY ADVS. SRI.GEORGE VARGHESE, SC
SRI.K.S.DILIP
SRI.SAJU N.A.
SMT.G.LEKHA
SMT.P.J.FLONY
SMT.S.AMBILY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-07-2015, ALONG WITH WP(C). 19921/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

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WP(C).No. 19376 of 2015 (V)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1 : COPY OF LEASE DEED EXECUTED BY THE PETITIONER AND 3RD RESPONDENT ON 14.3.2007.

EXT. P2 : COPY OF NOTICE DTD.18.6.2015 ISSUED ON BEHALF OF 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS :

EXT. R1(a) : COPY OF THE DEMAND NOTICE DATED 30.1.2011.

EXT. R1(b) : COPY OF THE ACKNOWLEDGEMENT CARD SIGNED BY THE 3RD RESPONDENT.

EXT. R1(c) : COPY OF THE ACKNOWLEDGEMENT CARD SIGNED BY THE 4TH RESPONDENT.

EXT. R1(d) : COPY OF REPLY GIVEN BY THE 3RD RESPONDENT TO EXT.R1(c) DATED 22.2.2011.

EXT. R1(e) : COPY OF REPLY TO EXT.R1(d) ISSUED BY THE BANK DATED 9.3.2011.

EXT. R1(f) : COPY OF ACKNOWLEDGEMENT CARD SIGNED BY THE RESPONDENTS 3 AND 4.

EXT. R1(g) : COPY OF LETTER ISSUED BY THE 3RD RESPONDENT DATED 9.6.2011.

EXT. R1(h) : COPY OF LETTER ISSUED TO RESPONDENTS 3 AND 4 DATED 7.7.2011.

EXT. R1(i) : COPY OF NOTICE ISSUED TO RESPONDENTS 3 AND 4 DATED 20.1.2012.

EXT. R1(j) : COPY OF ACKNOWLEDGEMENT CARD SIGNED BY THE 3RD RESPONDENT RECEIVING EXT. R1(i).

EXT. R1(k) : COPY OF THE POSSESSION NOTICE GIVEN BY THE 3RD RESPONDENT DATED 29.2.2012.

EXT. R1(l) : COPY OF PUBLICATION EFFECTED IN DECCAN CHRONICLE DATED 1.3.2012.

EXT. R1(m) : COPY OF PUBLICATION EFFECTED IN MANGALAM DAILY DATED 1.3.2012.

EXT. R1(n) : PHOTOGRAPHS SHOWING AFFIXTURE OF THE POSSESSION NOTICE IN THE SECURED ASSET.

(Contd...)

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EXT. R1(o) : COPY OF RELEVANT PORTION OF THE PRAYER IN THE S.A. ALONG WITH CASUE TITLE.

EXT. R1(p) : COPY OF THE FINAL ORDER IN S.A. 343/13 DATED 29.5.2015.

EXT. R1(q) : COPY OF NOTICE DATED 18.6.2015 SIGNED BY THE 3RD RESPONDENT ISSUED BY THE ADVOCATE COMMISSIONER.

//TRUE COPY//

P.A. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J.

W.P(C). Nos. 19376 & 19921 of 2015

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Dated this the 30th day of July, 2015

J U D G M E N T

The petitioners claimed to be as tenants of one Smt.Rosamma Varkey, one of the borrowers from the respondent Bank, have approached this Court challenging SARFAESI proceedings initiated to dispossess the borrowers from the secured assets.

2. They rely upon lease deed to claim the tenancy right over the secured assets. It is submitted that they were not arrayed as a party in the application filed before the CJM under Section 14 of SARFAESI Act. They submit that, in view of the judgment of the hon'ble Supreme Court in **Harshad Govardhan sondagar V. International Assets Reconstruction Company Limited (2014 (3) KLT 357)** proceedings under Section 14 is liable to be set aside.

3. The Bank has filed counter affidavit in WP(C) No.19376/2015, the objections also have been adopted in WP(C) No.19921/2015. It is stated that the petitioners have approached this Court without any bonafide. It is further submitted that, even

in the validity of the lease deed has been taken into account it can be clearly seen that all these are being created after the mortgage. It is also submitted that petitioners are not the tenants they have been set up by the borrower to drag the proceedings. It is submitted that the applications under Section 14 were filed in the year 2012 and Bank could not complete the proceedings on account of challenge made by the borrowers at different levels. It is further submitted that more than ₹37 crores is due from the borrower. It is pointed out that, immediately after dismissal of challenge made by the borrower, the petitioners have come up with plea that they are tenants. Therefore, without adverting to the merits of the claim of the petitioners, petitioners plea for protection cannot be looked into. It is also pointed out by the learned Senior counsel that the applications were filed in the year 2012 much before the judgment of the hon'ble Supreme Court. It is further pointed out that petitioners are not in possession, there is no necessity to implead them under Section 14.

4. This Court under Article 226 of the Constitution of India normally would not be justified in interfering with any factual matters which required resolution by exercise of judicial power.

The CJM has power under Section 14 to take into the factual aspects involved. No doubt, the appeal made by the learned Senior counsel requires credence as the Bank is unable to recover around ₹40 crores advanced to the borrower for the last several years. However, taking note of the expeditious resolution of the issue, this Court is of the view that, primarily the question of petitioners' tenancy has to be addressed by the CJM in terms of Section 14 of SARFAESI Act. Having such a remedy is available before the CJM, this Court would not be justified in considering the rival contentions of the parties. In that view of the matter, following directions are issued:

(i) The petitioner in WP(C) No.19376/2015 is allowed to be impleaded in Crl.M.P. No. 1599/2012 & the petitioner in WP(C) No.19921/2015 is allowed to to be impleaded in Crl.M.P. No.1156/2012 on the files of CJM Court, Thrissur. The learned CJM is directed to make necessary corrections in the cause title of the parties therein.

(ii) Petitioners and the Bank shall appear before the CJM on 10.08.2015 at 11.a.m. And on that day the petitioners shall place all their objections and relevant materials before the CJM.

(iii) Thereafter, after adverting to the objections and hearing to the parties, necessary orders shall be passed within a further period of 3 weeks.

These writ petitions are disposed of.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE.

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