

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 19476 of 2015 (H)

PETITIONER :

**DAVISON,
AGED 30 YEARS, S/O.CLEETUS,
PALLUYITHIYIL HOUSE, KATTOOR P.O.,
VALAVUR, ALAPPUZHA.**

BY ADV. SRI.MATHEW JAMES

RESPONDENT(S) :

- 1. THE AUTHORISED OFFICER,
UCO. BANK, SREE RAMARAJSWARAM BUILDING, CHURCH ROAD
NORTH OF STONE BRIDGE, ALLEPPEY – 688011.**
- 2. BRANCH MANAGER.,
UCO BANK, SREE RAMARAJSWARAM BUILDING, CHURCH ROAD
NORTH OF STONE BRIDGE, ALLEPPEY- 688011.**

R1 & R2 BY ADV. SRI.GEORGE KARITHANAM VARGHESE, SC

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

Mn

...2/-

WP(C).No. 19476 of 2015 (H)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1: TRUE COPY OF THE JUDGMENT DATED 8.2.2013 PASSED BY THIS
 HONOURABLE COURT IN WP(C) NO. 3561/2013 (U).**
- EXT.P2: TRUE COPY OF THE MEDICAL REPORT DATED 21.6.2014 ISSUED
 FROM NEW MEDICAL CENTRE HOSPITAL LLC, DUBAI IN RESPECT OF
 THE BROTHER OF THE PETITIONER.**
- EXT.P3: TRUE COPY OF THE NEWS PAPER REPORT IN RESPECT OF THE KNEE
 TRANSPLANTATION CARRIED OUT ON THE FATHER OF THE
 PETITIONER.**
- EXT.P4: TRUE COPY OF THE POSSESSION NOTICE DATED 14.1.2015 ISSUED
 BY THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.19476 of 2015

Dated this the 7th day of July, 2015

JUDGMENT

The petitioner availed a cash credit facility from the second respondent Bank. The secured asset is a residential building. The petitioner has been dispossessed from the secured asset.

2. The petitioner had approached this Court in W.P.(C) No.3561/2013 at the stage when notice under Section 13(2) of the SARFAESI Act was issued. This Court permitted the petitioner to discharge the liability in ten equal monthly instalments. It appears that the petitioner has not remitted any amount.

3. On account of the default in honouring conditions in the above judgment, the Bank initiated further steps and dispossessed the petitioner. The petitioner's case is that it was owing to the treatment of his brother as large amount was spent, he could not honour the conditions in the judgment.

4. As the matter stands now, the petitioner has been dispossessed. The petitioner's only prayer now before this Court is that he may be given breathing time to clear the entire liability and the Bank may be directed to return the secured asset.

5. Learned counsel for the Bank opposes the prayer of the petitioner and submits that the petitioner is not entitled for any relief as the petitioner failed to honour the directions in the judgment.

6. It is to be noted that the petitioner has approached this Court on account of dispossession and cause of action is totally different and therefore, there is no impediment in entertaining the writ petition. Since, the petitioner has expressed his willingness to settle the entire liability, I am of the view, the Bank shall give some breathing time to the petitioner. Accordingly, this writ petition is disposed of with the following directions:

- i. If the petitioner deposits Rs.5 lakhs within a week, the petitioner shall return the secured asset to the petitioner.
- ii. Thereafter, the petitioner shall settle the entire liability within a further period three months.
- iii. If the petitioner fails to comply with the above, the Bank is free to proceed against the petitioner from the stage where it is stopped.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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