

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. 21075 of 2015 (H)

PETITIONER(S):

- 1. SUNNY JOSEPH,
NADUVATHETTU HOUSE, CHERUTHONY,
THADAYAMBAD 685602,
IDUKKI DISTRICT.**
- 2. RAJU JOSEPH,
NADUVATHETTU HOUSE, CHERUTHONY, THADAYAMBAD 685602,
IDUKKI DISTRICT.**
- 3. MERLY SUNNY,
NADUVATHETTU HOUSE, CHERUTHONY, THADAYAMBAD 685602,
IDUKKI DISTRICT.**

**BY ADVS.SRI.P.C.THOMAS
SRI.ROJO J.THURUTHIPARA**

RESPONDENT(S):

**THE AUTHORISED OFFICER AND CHIEF MANAGER,
THE FEDERAL BANK LTD., IDUKKI BRANCH,
IDUKKI DISTRICT 685602**

**BY ADVS. SRI.A.ANTONY
SMT.LEELAMMA ANTONY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE TITLE DEED DATED 25.03.2002 OF THE AGRUCULTURAL LAND ON WHICH THE SECURURITY INTEREST HAS BEEN CREATED
- P2: TRUE PHOTOGRAPHS OF THE LAND IN QUESTION
- P3: TRUE COPY OF THE PASS BOOKS OF THE 3 LOAN ACCOUNTS OF THE PETITIONERS
- P4: TRUE COPY OF THE REPLY DATED 15.12.2014 TO THE NOTICE DATED 08.12.2014 U/S 13(2) OF THE SARFAESI ACT
- P5: TRUE PHOTOCOPY OF POSSESSION NOTICE DATED 11.03.2015 U/S. 13(2) OF THE SARFESI ACT
- P6: TRUE COPY OF THE LAWYER NOTICE DATED 09.03.2015
- P7: TRUE COPY OF THE SA NO.149/2015
- P8: TRUE COPY OF THE IA.NO.5432/2015 IN SA.NO.149/2015 FOR APPOINTING ADVOCATE COMMISSIONER
- P9: TRUE COPY OF THE IA. FOR STAY FILED IN SA NO.149/2015 FOR APPOINTING ADVOCATE COMMISSIONER
- P10: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE BANK IN SA
- P11: TRUE COPY OF THE IMPUGNED COMMUNICATION ISSUED BY THE ADVOCATE COMMISSIONER, WHO WAS APPOINTED BY THE CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA AS PER THE EXPARTE ORDER IN CMP.NO2454/2015
- P12: TRUE COPY OF THE CERTIFICATE DATED 23/7/15 ISSUED BY THE AGRICULTURAL OFFICER VAZHATHOP
- P13: TRUE COPY OF THE CMP2454/15 DATED 10/6/15
- P14: TRUE COPY THE ORDER DATED 17/6/15 IN CMP.2454/15 BY CJM COURT THODUPUZHA.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

PJ

P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 21075 of 2015

Dated this the 30th day of July, 2015

JUDGMENT

Petitioners, challenging SARFAESI proceedings, have approached this Court.

2. It is the case of the petitioners is that the secured asset is an agricultural property and therefore, the respondent Bank cannot proceed under the SARFAESI Act.

3. In this matter, the learned counsel for the respondent Bank submits that the secured asset consists of residential building along with commercial building. Merely because there are certain trees in the property that cannot make the property as an agricultural property. The learned counsel for the Bank disputes the claim of the petitioner that is that the property is the agricultural property.

4. It is admitted by both counsel that S.A.No.149/2015 is pending before the Debts Recovery Tribunal. It is submitted that no stay has been granted. If that be so, the proper remedy of the

petitioner is to seek appropriate interim relief before the Debts Recovery Tribunal. This Court would not be justified when the Securitization Application is pending before the statutory authority which is competent to decide upon the issue. Accordingly, declining the jurisdiction, this writ petition is disposed of.

Therefore, without prejudice to the petitioners' nature of contention and raising all questions before the Debts Recovery Tribunal, the coercive steps initiated against the petitioners shall be deferred for a period of one month on condition that the petitioners remit Rs.2 lakhs within two weeks.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

In