

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937**

**WP(C).No. 22225 of 2015 (C)**  
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**PETITIONER(S):**  
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**AYSHA, W/O.ABOOBAKKAR, AGED 58 YEARS,  
RESIDING AT 17/450, P.O. PANANGAD,  
BALUSSERY VIA, KOZHIKODE DISTRICT, PIN: 673 612.**

**BY ADVS.SRI.BINOY VASUDEVAN,  
SRI.M.T.THOMAS,  
SMT.P.G.BABITHA.**

**RESPONDENT(S):**  
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- 1. THE KOZHIKODE DISTRICT CO OPERATIVE BANK LIMITED,  
H.O. P.B.NO.503, KALLAI ROAD, CHALAPPURAM P.O.,  
KOZHIKODE- 673 002, REPRESENTED BY ITS GENERAL MANAGER.**
- 2. THE AUTHORIZED OFFICER,  
THE KOZHIKODE DISTRICT CO OPERATIVE BANK LIMITED,  
H.O. P.B.NO.503, KALLAI ROAD, CHALAPPURAM P.O.,  
KOZHIKODE -673 002**
- 3. K.V. HARIDASAN,  
VATTACHATH, PANANGAD P.O., BALUSSERY VIA.,  
KOZHIKODE DISTRICT- 673 612.**
- 4. JAYA HARIDASAN,  
W/O.HARIDASAN, VATTACHATH, PANANGAD P.O.,  
BALUSSERY VIA, KOZHIKODE DISTRICT- 673 612.**

**R1 & R2 BY ADV. SRI.R.SUDHISH, SC.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**rs.**

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

- P1: TRUE COPY OF DOCUMENT NO.1867/2008 OF S.R.O BALUSSERY.
- P2: TRUE COPY OF DOCUMENT NO.1866/2008 OF S.R.O, BALUSSERY.
- P3: TRUE COPY OF DOCUMENT NO.367/2004 OF S.R.O, BALUSSERY.
- P4: TRUE COPY OF THE ENCUMBRANCE CERTIFICATE IN RESPECT OF THE PROPERTY OF PETITIONER'S SON.
- P5: TRUE COPY OF THE LAND TAX RECEIPT IN RESPECT OF THE PROPERTY OF PETITIONER'S SON.
- P6: TRUE COPY OF THE NOTICE ISSUED BY THE SECOND RESPONDENT UNDER RULE 8(1) OF THE SECURITY INTEREST (ENFORCEMENT) RULES, 2002 DATED 04/02/2015.
- P7: TRUE COPY OF THE PLAINT IN OS. NO.181/2015 ON THE FILE OF THE COURT OF THE MUNSIF AT PERAMBRA.
- P8: TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER.

**RESPONDENT'S EXHIBITS:-** NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

**A.K.JAYASANKARAN NAMBIAR, J.**  
.....  
**W.P.(C).No.22225 of 2015**  
.....  
**Dated this the 16<sup>th</sup> day of December, 2015**

**J U D G M E N T**

The petitioner who claims to be the purchaser of property that was mortgaged in favour of the respondent bank by the 3<sup>rd</sup> respondent is aggrieved by the steps taken by the respondent bank to take possession of the secured asset where she is stated to be residing. Ext.P8 is the notice issued by the Advocate Commissioner pursuant to the order of the Magistrate under Section 14 of the SARFAESI Act.

2. I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the respondent bank.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I note that the sole prayer of the petitioner is to permit her to remit the balance amounts outstanding to the bank in easy instalments. Taking into

account the plea of financial hardship raised by the petitioner, I dispose the writ petition with the following directions:-

(i) The total amount outstanding from the petitioner to the respondent bank, in respect of the loan availed by the 3<sup>rd</sup> respondent is stated to be Rs.6,04,072/- together with accrued interest. Accordingly, if the petitioner discharges the said liability of Rs.6,04,072/- together with accrued interest in 10 equal and successive monthly instalments commencing from 05.01.2016, then further proceedings against the secured asset shall be kept in abeyance.

(ii) It is made clear that, if the petitioner commits a default in respect of any of the instalments, she will lose the benefit of this judgment and the respondent bank will be free to continue the recovery proceedings against her from the stage at which they presently stand.

(iii) I make it clear that nothing in this judgment shall stand in the way of the petitioner claiming any relief by way of

damages from the 3<sup>rd</sup> respondent or in the way of the petitioner approaching the respondent bank along with the 3<sup>rd</sup> respondent for getting the benefits of a one time settlement scheme.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

W.P.(C). No.22225 of 2015