IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(C).No. 23600 of 2015 (Y)

PETITIONER(S) :

D.SAMPATHKUMAR, AGED 65 YEARS,
S/O. LATE N.K.DHARAMARAJ GOWDER,
RESIDING AT DOOR NO.11, WARD NO.5, WEST CAR STREET,
KAMAYAGOUNDAPATTY P.O., UTHAMAPALAYAM TALUK,
THENI DISTRICT, TAMIL NADU - 625 521.

BY ADVS.SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHY
SMT.REENA THOMAS

RESPONDENT(S) :

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1. UNION BANK OF INDIA,
VANDANMEDU BRANCH, IDUKKI DISTRICT,
REPRESENTED BY ITS BRANCH MANAGER.

2. REGIONAL MANAGER
UNION BANK OF INDIA, REGIONAL OFFICE,
ZAC COMPLEX, KODIMATHA, KOTTYAM.

R1 & R2 BY ADV. SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMV

WP(C).No. 23600 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1 -	**COPIES OF THE SARFAESI NOTICE ISSUED TO THE PETITIONER DTD. 19.6.2007.**
P2 -	**COPY OF THE ONE TIME SETTLEMENT PROPOSAL SUBMITTED BY THE PETITIONER ALONG WITH HIS FAMILY MEMBERS.**
P3 -	**COPY OF THE LETTER DTD. 01.4.2015 OF THE 1ST RESPONDENT.**
P4-	**COPY OF THE ADVOCATE NOTICE DTD. 04.6.2015.**
P5 -	**COPY OF THE ADDITIONAL REPLY SUBMITTED ON BEHALF OF THE PETITIONER THROUGH HIS COUNSEL DTD. 03.7.2015.**
P6 -	**COPY OF SKETCH OF THE ENTIRE 77.20 ACRESS SHOWING THE LIE OF THE AFORESAID 5 ACRES OF THE PETITIONER.**

RESPONDENT(S)' EXHIBITS :

R1A-	**COPY OF OTS PROPOSAL DATED 23.06.2015 GIVEN BY THE BANK AND ACCEPTED BY THE PETITIONER.**
R1B-	**COPY OF MEMORANDUM OF DEPOSIT OF TITLE DEED DATED 4.1.2005 DRAWN BY THE BANK.**
R1C-	**COPY OF TAX RECEIPT DATED 16.11.2004 ISSUED FROM THE VILLAGE OFFICE.**
R1D-	**COPY OF VALUATION REPORT DATED 21.01.2015 TAKEN BY THE BANK.**

/TRUE COPY/

P.A.TO JUDGE

AMV

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.23600 of 2015

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Dated this the 20th day of October, 2015

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

The petitioner along with 12 of his family members had availed of a purchase loan and an agricultural loan from the respondent bank. When there was a default occasioned in the repayment of the loan amounts the respondent bank proceeded against the petitioner and his family members by filing O.A.Nos.342 to 347 of 2012 before the Debt Recovery Tribunal, Ernakulam. SARFAESI proceedings were also initiated against the petitioner and others. In the aforesaid loan transaction, the petitioner and his family members had offered various item of property as security for the loans advanced to them. One of the items of property was an extent of 5 acres, equivalent to 2 Hectares, two Ares and 35 Square Metres in Sy.No.38/1 of Chakkupalam village obtained by Document No.2004/84 of Kattapana SRO (the said property being shown as comprised in Sy.No.38/1-3-1 in village records). In the writ petition, the petitioner is essentially aggrieved by the fact that although O.A.Nos.342 to 347 of 2012 filed by the respondent bank before the Debt Recovery Tribunal, were subsequently closed after the petitioners discharged the liability due to the respondent bank under the loan transactions mentioned above, the respondent bank did not release the title deeds in respect of the aforementioned property comprising of five acres, on the ground that, the said item of property was treated as security for another loan transaction which was covered by O.A.No.185 of 2004 that was preferred by the respondent bank before the Debt Recovery Tribunal. It is the stand of the petitioner in the writ petition that he had not offered the said item of property as security for the loan transaction covered in O.A.No.185 of 2004 and the unilateral action of the respondent bank in deeming the said property as security in the said loan transaction was an illegal exercise.

2. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondent bank.

3. In the counter affidavit filed by the respondent bank, as also at the time of hearing before this Court, the specific stand of the respondent bank is that by Ext.R1(a) agreement between the petitioner and the respondent bank, the permission to the respondent bank to retain the title deeds in respect of the property in question was given by the petitioner as a condition for the extension of a one time settlement facility to the borrowers. It is contended therefore that, even though there was no separate mortgage deed executed by the petitioner in favour of the respondent bank in respect of the said property, the respondent bank was entitled to retain the title deed in respect of the property

through the exercise of the bankers lien. Counsel for the petitioner, however, would contend that inasmuch as the interest of the respondent bank is only in respect of the value of the property and the petitioner is prepared to offer the entire value, as fixed by the bank in respect of the property, as security for the loan transaction covered by O.A.No.185 of 2004, the respondent bank should not insist on a retention of the title deeds of the property which, according to the petitioner, he has already sold to a 3rd party.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find force in the contention of the petitioner that the respondent bank should not insist on a retention of the title deeds pertaining to the property comprising of 5 acres of land in Sy.No38/1 of Chakkupallam village. Even according to the respondent bank, the value fixed in respect of the property by the official valuer appointed by the respondent bank is Rs.15 lakhs as evidenced by Ext.R1-D valuation report dated 21.01.2015 produced by the respondent bank along with its additional counter affidavit. Accordingly, I am of the view that, the interests of justice would be met by permitting the petitioner to remit the amount of Rs.15 lakhs that is fixed by the respondent bank as the value of the property in question, as a condition for getting a release of the title deed in respect of the

said property from the respondent bank. I therefore dispose the writ petition with the following directions:

i. The petitioner shall deposit an amount of Rs.15 lakhs in an interest bearing no-lien account with the respondent bank within a period of 30 days from the date of receipt of a copy of this judgment.

ii. On the petitioner effecting the said payment as directed, the respondent bank shall forthwith release the title deeds in respect of the property mentioned above to the petitioner.

iii. The deposit of 15 lakhs as above shall be subject to the outcome of O.A.No.185 of 2004 pending before the Debt Recovery Tribunal, Ernakulam and the criminal cases stated to be pending.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/20.10.15

"O.A.No.185 of 2004" wherever it occures in the judgment is corrected and substituted as **"O.A.No.185 of 2006"**, vide order dated 20.11.2015 in I.A.No.16425/2015 in W.P.(C).No.23600/2015.

Sd/-
Registrar (Judicial)