IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 23640 of 2015 (D)

PETITIONER(S):

FASALUDHEEN A.K., AGED 57 YEARS
S/O. MUHAMMED KUNJU, POONKAVANAM, PUTHUSSERIMUKKU P.O.
KALLAMBALAM, THIRUVANANTHAPURAM.

BY ADVS.SRI.H.HAMZA ROWTHER
SRI.V.K.PEER MOHAMED KHAN

RESPONDENT(S):

BANK OF INDIA
REPRESENTED BY ITS AUTHORISED OFFICER
ATTINGAL BRANCH, P.B.NO.9, ATTINGAL
THIRUVANANTHAPURAM-695 101.

BY ADVS. SRI.K.K.JOHN
SRI.ASISH K.JOHN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23640 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF THE ORDER IN IA NO.2436/2010 OF DEBTS RECOVERY TRIBUNAL, ERNAKULAM.

P2 : COPY OF THE SALE NOTICE ALONG WITH THE POSTAL COVER.

P3 : COPIES OF THE PAPER PUBLICATION EFFECTED IN NEW INDIAN EXPRESS AND DEEPIKA DAILY SHOWING THE DATE 18.08.2015 ALONG WITH THE POSTAL COVER DTD.17.07.2015.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 23640 of 2015
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Dated this the 11th day of August, 2015

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

The petitioner has approached this Court challenging the sale notice issued under the SARFAESI Act.

2. Petitioner has been served with sale notice dated 06.07.2015. The sale scheduled was on 12.08.2015. The case of the petitioner is that, the notice of sale was served only on 16.07.2015 and therefore, the Bank did not observe mandatory period of 30 days. It is submitted that, now the fresh sale has been ordered on 18.08.2015 as per Ext.P3 and that, no notice of fresh sale has been served on the petitioner.

3. Learned counsel for the Bank submits that, the sale proposed in Ext.P2 notice served on the petitioner and the sale to take place as per Ext.P3 is one and the same. It is also submitted that, the sale will take place on 18.08.2015.

4. It is to be noted that, the sale originally scheduled as per the intimation given to the petitioner is different from the sale now proposed. Giving 30 days notice as contemplated under Rule 9(1) of the Security Interest (Enforcement) Rules 2002 is

mandatory. The Bank cannot change the date fixed. If the date has to be changed, necessarily, 30 days notice has to be given to the petitioner.

5. In view of the fact that no sale would take place on 12.08.2015, the Bank cannot conduct a sale on 18.08.2015 without issuing fresh notice. No paper publication has been taken out for the sale scheduled on 18.08.2015 and no notice has been served on the petitioner.

6. This Court is of the view that, the Bank can only proceed further in this matter, after issuing 30 days notice to the petitioner as contemplated under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002.

This writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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