IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 24840 of 2015 (D)

PETITIONER(S):

VETTUKALLUPURATH PREETHA, AGED 38 YEARS,
W/O.RAJEEV KUMAR, CHERUMBACHAL,
MALAKKALLU P.O., KASARAGOD DISTRICT.

BY ADV. SRI.A.ARUNKUMAR

RESPONDENT(S):

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1. AUTHORISED OFFICER, STATE BANK INDIA, KANHANGAD BRANCH, SANABIL PLAZA, RAMNAGAR ROAD, P.O.KANHANGAD, KASARAGOD DISTRICT - 671 315.

2. THE STATE BANK OF INDIA, REPRESENTED BY ITS CHIEF MANAGER, KANHANGAD BRANCH, SANABIL PLAZA, RAMNAGAR ROAD, P.O.KANHANGAD, KASARAGOD DISTRICT - 671 315.

3. BABY GEORGE, S/O.GEORGE, MATTATHUKUNNEAL HOUSE, CHERUMBACHAL, P.O.MALAKKALLU, (VIA) RAJAPURAM, KASARAGOD DISTRICT - 671 532.

4. CICELY BABY, W/O.BABY GEORGE, MATTATHUKUNNEAL HOUSE, CHERUMBACHAL, P.O.MALAKKALLU, (VIA) RAJAPURAM, KASARAGOD DISTRICT - 671 532.

R1 & 2 BY SRI.P.V.SURENDRANATH,SC,SBI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 24840 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: A TRUE COPY OF THE LOAN PASS BOOK.

EXT.P2: A TRUE COPY OF THE PASS BOOK OF SYNDICATE BANK.

EXT.P3: A TRUE COPY OF THE STATEMENT OF ACCOUNT ISSUED FROM CORPORATION BANK MALAKKALLU BRANCH.

EXT.P4: A TRUE COPY OF THE RECEIPT SHOWING THE PAYMENT.

EXT.P5; A TRUE COPY OF THE DISCHARGE SUMMARY OF 3RD RESPONDENT ISSUED FROM KMC HOSPITAL, MANGALORE.

EXT.P6: A TRUE COPY OF THE REPRESENTATION SUBMITTED BY 4TH RESPONDENT TO THE KASARAGOD LEGAL SERVICE AUTHORITY.

EXT.P7: A TRUE COPY OF THE LAWYER NOTICE DATED 24/03/2015 ISSUED TO THE PETITIONER

EXT.P8: A TRUE COPY OF THE REPLY SUBMITTED BY THE 3RD AND 4TH RESPONDENT TO THE LAWYER NOTICE.

EXT.P9: A TRUE COPY OF THE DEMAND NOTICE DATED 18/06/2015.

EXT.P10: A TRUE COPY OF THE CERTIFICATE ISSUED BY THE AGRICULTURAL OFFICER, KALLUR

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.24840 OF 2015 (D)

Dated this the 9th day of November, 2015

J U D G M E N T

The petitioner, who had purchased an item of property from the 3rd respondent, who had availed loans from the 2nd respondent bank and defaulted in repayment of the same, is aggrieved by the steps taken by the respondent bank under the SARFAESI Act, to proceed against the property that was purchased by the petitioner. Ext.P9 is the demand notice issued by the respondent bank.

2. I have heard the learned counsel for the petitioner as also the learned senior Standing counsel for the respondent bank.

3. The learned senior Standing counsel for the respondent bank would submit that, in the instant case, the petitioner is a person who had purchased an item of immovable property from the 3rd respondent, who had mortgaged the property in favour of the 2nd respondent bank for obtaining loan amounts from the bank. It is the case of the respondent bank that the petitioner cannot be said to be a

bona fide third party purchaser without notice, since he was well aware of the mortgage entered into by the 3rd respondent with the 2nd respondent bank in respect of the said property. It is therefore urged that no indulgence should be shown to the petitioner merely because he is stated to be in ownership and possession of the property at this stage.

4. On a consideration of the facts and circumstances of the case and taking note of the fact that the petitioner is presently prejudiced by the action taken by the respondent bank against the property in question, I feel that the interests of justice would be met by permitting the petitioner to discharge the present liability of the 3rd respondent in order to save his property. Accordingly, the writ petition is disposed with the following directions:

> (i) The total overdue amount, in respect of the housing loan availed by the 3rd respondent, is stated to be Rs.1,16,492/- together with accrued interest. Similarly, the total amount outstanding towards two other loans that were availed by the 3rd respondent, is stated to be Rs.1,05,890/- and Rs.27,079/- respectively. Accordingly, if the petitioner remits

the total amount of Rs.2,49,390/- together with accrued interest in four equal and successive monthly installments commencing from 30.11.2015, and continues to keep up the regular installment payments as per the original loan schedule in the housing loan account, then the further proceedings initiated against her by the respondent bank shall be kept in abeyance.

(ii) It is further made clear that if the petitioner commits a default in respect of any of the installments, 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/9/11/15