

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 24953 of 2015 (T)

PETITIONER :

**SHEEBA JUSTINE, AGED 47 YEARS,
W/O. JUSTINE J.KUTİYANI, KUTİYANI HOIUSE,
ERATTUPETTA P.O.,
PRESENTLY RESIDING AT KUTİYANI HOUSE,
VELUTHEDATHU PARAMBIL BUILDING, PALAI-686 575.**

**BY ADVS.SRI.NOBLE MATHEW
SRI.JESTIN MATHEW**

RESPONDENT(S):

- 1. THE FEDERAL BANK, ALUVA,
KERALA, REPRESENTED BY ITS GENERAL MANAGER.**
- 2. THE AUTHORISED OFFICER,
ASSISTANT GENERAL MANAGER, THE FEDERAL BANK LIMITED,
REGIONAL OFFICE, THEKKUMKAL BUILDING, T.B.ROAD,
KOTTAYAM-686 001.**
- 3. SHAJEE K.,
THE RECOVERY OFFICER, OFFICE OF THE RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL (KERALA & LAKSHADWEEP),
8TH FLOOR, K.S.H.B BUILDING, PANAMPILLY NAGAR,
ERNAKULAM-682 036.**
- 4. DEBT RECOVERY TRIBUNAL
ERNAKULAM, (KERALA AND LAKSHADWEEP),
REPRESENTED BY ITS REGISTRAR.**
- 5. THE FEDERAL BANK LIMITED,
ARUVITHURA BRANCH, ST. GEORGE CHURCH BUILDING,
ERATTUPETTA P.O., KOTTAYAM DISTRICT-686 122.**

**R1 & R2, R5 BY ADVS. SRI.A.ANTONY
SMT.LEELAMMA ANTONY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 24953 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE PLAINT IN OS NO.58 OF 2015 FILED BEFORE THE HON'BLE SUBORDINATE JUDGE COURT AT PALA, DTD. 7.8.2015.**
- P2 : COPY OF THE AUCTION SALE NOTICE DTD. 7.8.2015 APPEARED ON THE MATHRIBHUMI DAILY DTD. 7.8.2015.**
- P3: COPY OF THE NOTICES RECEIVED BY THE PETITIONER ON 8/9/2015**
- P4: COPY OF THE INTERLOCUTORY APPLICATION FILED BEFORE RESPONDENT NO.3**
- P5: COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER, ERATTUPETTA ON 24/11/2014 EVIDENCING THE OWNERSHIP AND POSSESSION OF THE LAND.**
- P6: COPY OF THE MERCY PETITION FILED BY ME BEFORE RESPONDENT NO.1 AND HIS SUBORDINATES**

RESPONDENT(S)' EXHIBITS:

- R2(A): COPY OF THE COMPLAINT DATED 18/09/2015 SUBMITTED BY THE FEDERAL BANK, ARUVITHURA BRANCH, BEFORE THE CIRCLE INSPECTOR OF POLICE, ERATTUPETTA.**

/TRUE COPY/

PA.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.24953 of 2015

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Dated this the 7th day of October, 2015

J U D G M E N T

The petitioner in the writ petition is the wife of Justine J.Kuttiyani, who along with the petitioner had availed four loans from the respondent bank. When there was a default in repayment of the loan amounts to the respondent bank, the bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as 'the SARFAESI Act') as well as under the Recovery of Debts Due to Banks and Financial Institutions Act. The proceedings under the said enactments are stated to be pending before the Debt Recovery Tribunal, Ernakulam. It is the case of the petitioner in the writ petition that she has reason to believe that her husband is no more since she has not heard of him for more than six years. While so, she came across Ext.P2 sale notice putting up properties, that were offered as security for the loan advanced to the petitioner and her husband, for sale for recovery of the amounts due from them to the respondent bank. In the writ petition, the petitioner is concerned with item No.2 in Ext.P2 sale notice which, according to the petitioner, is property which is partly residential and partly commercial, and in respect

of which the petitioner and her husband are co-owners. With a view to save the said property from proceedings under the SARFAESI Act and the Recovery of Debts Due to Banks and Financial Institutions Act, the petitioner has approached this Court through the present writ petition seeking some time for effecting a sale of item No.2, shown in the list of properties in Ext.P2 sale notice, so that, she can discharge the entire liability due to the respondent bank through a private sale of the said property. It is her specific contention in the writ petition that, if the respondent bank is permitted to effect a sale of the property in an auction pursuant to proceedings before the Debt Recovery Tribunal, there is a danger of the said item of property not fetching the real price that it would otherwise fetch in a private sale. It is on these grounds that the present writ petition has been filed.

2. When the matter came up for orders before this Court on 10.09.2015, this Court adjourned the sale pursuant to Ext.P2 by three weeks and also recorded the submission of the learned counsel for the petitioner that, within the aforesaid period of three weeks, the petitioner would identify a buyer for the aforesaid item of property and furnish the details before this Court. When the matter was taken up for orders today, it is submitted by counsel for the petitioner that, the petitioner has identified a buyer for the said

item of property and, if the matter is relegated to the Debt Recovery Tribunal before which forum proceedings are afoot to effect sale of the properties pursuant to Ext.P2 sale notice, then the person identified by the petitioner as a buyer for item No.2 in Ext.P2 sale notice, can be identified to the Recovery Officer, who can then proceed to confirm the sale in favour of the said person for the purchase value offered by him. It is the submission of counsel for the petitioner that, the sale of item No.2 property in Ext.P2 sale notice would be sufficient to discharge the entire liability due to the respondent bank. Counsel for the respondent bank would agree to such a course of action since ultimately the interest of the bank is only to realise the arrears due to it from the petitioner.

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

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that if the petitioner is able to identify a buyer who can offer a realistic price for the 2nd item of property in Ext.P2 sale notice over which the petitioner has co-ownership rights, then it would be in the interest of justice to enable the petitioner to secure the best price for the

secured asset so as to discharge the liability due to the respondent bank. I also find that resorting to such a course of action would not prejudice the interest of the respondent bank in any manner. I therefore direct the Recovery Officer, Debt Recovery Tribunal, Ernakulam to effect the sale of the property shown as item No.2 in Ext.P2 sale notice in favour of the nominee of the petitioner, on the petitioner depositing the amounts representing the current outstanding liability due to the bank. The petitioner shall deposit the said amount before the Debt Recovery Tribunal within three weeks from the date of receipt of a copy of this judgment. On receipt of the said amount, the sale of item No.2 in Ext.P2 sale notice, in favour of the nominee of the petitioner shall be confirmed in favour of the nominee of the petitioner through the issuance of a sale certificate, and at the expense of the petitioner/her nominee. The Debt Recovery Tribunal shall thereafter permit the respondent bank to withdraw the amounts deposited by the petitioner's nominee pursuant to the directions in this judgment. The Recovery Officer shall, on realisation of the amounts due to the respondent bank pursuant to the sale confirmed in favour of the nominee of the petitioner, promptly return the title deeds in respect of the property to the petitioner after getting the same released from the Debt Recovery Tribunal.

5. I make it clear that, if there is any default occasioned by the petitioner in compliance with any of the directions that are issued to him in this judgment, then the petitioner will lose the benefit of this judgment and the respondent bank will be free to continue the proceedings against the properties mentioned in Ext.P2 sale notice from the stage at which they presently stand.

The writ petition is disposed of as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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