IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 25473 of 2015 (H)

PETITIONER :

NABEESA, W/O.(LATE) IBRAHIM, AGED 48 YEARS,
PATTA HOUSE, NEAR JUMA MASJID, BAMBRANA,
KASARGOD DISTRICT.

BY ADVS.SRI.SURESH KUMAR KODOTH
SRI.K.P.ANTONY BINU

RESPONDENT(S):
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1. KERALA GRAMIN BANK,
   REPRESENTED BY ITS BRANCH MANAGER,
   KUMBALA BRANCH, KASARGOD POST & DISTRICT - 671 121.

2. AUTHORIZED OFFICER,
   KERALA GRAMIN BANK, KUMBALA BRANCH,
   KASARGOD POST & DISTRICT - 671 121.

3. HAMZA, S/O.K.P. ABDULLA,
   SAKUNA MANZIL, MORGRAL P.O, MORGAL,
   KASARGOD DISTRICT, PIN- 671 321.

R1 & R2 BY SRI.DEVAN RAMACHANDRAN, SC, KERALA GRAMIN BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 25473 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF THE MEMORANDUM OF APPLICATION IN OA.235/2015 BEFORE THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM.

P2 - TRUE COPY OF THE WRITTEN STATEMENT IN OA.235/2015 BEFORE THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM ON 17.8.2015

P3 - TRUE COPY OF THE ORDER DATED 25.6.2014 IN OS NO.287/2013 BEFORE THE MUNSIFF COURT, KASARGOD.

P4 - TRUE COPY OF THE NOTICE DATED 6.8.2015 ISSUED BY THE 2ND RESPONDENT.

P5 - TRUE COPY OF THE DOCUMENT NO.1175/80 DATED 23.6.1980 ALONG WITH ENGLISH TRANSLATION.

P6 - TRUE COPY OF THE CERTIFICATE DATED 20.9.2013 ISSUED BY THE VILLAGE OFFICER

P7 - TRUE COPY OF CERTIFICATE ISSUED BY THE AGRICULTURAL OFFICER DATED 7.10.2013

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.25473 of 2015

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Dated this the 20th day of August, 2015

JUDGMENT

The petitioner, challenging the proceedings initiated under the SARFAESI Act, has approached this Court. She is a guarantor to the loan obtained by the third respondent.

2. The petitioner's case is that the property is an agricultural property and therefore, it cannot be proceeded under the SARFAESI Act. It is stated that hypotheticated goods were available for the Bank to proceed to recover the loan amount and instead, the Bank has chosen to proceed against the immovable property belongs to her. It is also stated that the Bank also filed an Original Application before the Debts Recovery Tribunal and therefore, parallel proceedings is illegal.

3. There is no bar in initiating parallel proceedings to recover the loan amount. The contention of the petitioner is that the property is an agricultural property, cannot be decided in the public law remedy under Article 226 of the Constitution. The petitioner has an alternative remedy before the Debts Recovery Tribunal.

In that view of the matter, with liberty to approach the Debts Recovery Tribunal, this writ petition is disposed of. However, to enable the petitioner to work out the remedy before the Debts Recovery Tribunal, further coercive steps shall be deferred for a period of one month from today.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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