**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937**

**WP(C).No. 26462 of 2015 (G)**

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**PETITIONER(S):**

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**ABDUL LATHEEF AGED 48 YEARS,**
**S/O. MOHAMMED, NEDUMPARAMBIL HOUSE**
**PONMUNDAM AMSOM, CHILAVIL DESOM OF**
**TIROOR TALUK, MALAPPURAM DISTRICT**

**BY ADV. SRI.K.MUHAMMED SALAHUDHEEN**

**RESPONDENT(S):**

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**1. THE MALAPPURAM DISTRICT CO-OPERATIVE BANK LTD.**
**REP. BY ITS GENERAL MANAGER, (AUTHORISED OFFICER)**
**FIROZKHAN P.M. S/O. NOHAMMED SHERIEF, AGED 37 YEARS**
**MALAPPURAM DISTRICT COOPERATIVE BANK LTD.**
**H.O .UP HILL, MALAPPURAM - 676 505**

**2. ABDUL RAZACK, S/O. ABDUL RAHMANKUTTY**
**AGED 49 YEARS, ADIMAPRAMBIL HOUSE,**
**PONMUNDAM PO, MALAPPURAM DISTRICT - 676 106**

**BY SRI.E.S.M.KABEER,SC,MALAPPURAM DIST.CO-OPERATIVE BANK LTD.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C).No. 26462 of 2015 (G)**

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**APPENDIX**

**PETITIONER'S EXHIBITS:-**

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| **EXT.P1** | **TRUE COPY OF THE ORDER OF THE RENT CONTROL COURT, TIRUR IN RCP 13/11 DATED 21.1.2012** |
| **EXT.P2** | **TRUE COPY OF THE PLAINT IN OS No.42/2012 ON THE FILES OF THE MUNSIFF COURT, TIRUR DATED 02.02.2012** |
| **EXT.P3** | **TRUE COPY OF THE JUDGMENT IN OS No.42/2012 OF THE MUNSIFF COURT, TIRUR DATED 09.12.2013** |
| **EXT.P4** | **TRUE COPY OF THE MEMORANDUM OF APPEAL IN CMA No.32/14 ON THE FILES OF THE LEARNED SUB COURT, TIRUR DATED 09.10.2014.** |
| **EXT.P5** | **TRUE COPY OF THE CMP No.4135/2014 DATED NIL ON THE FILES OF THE CJM COURT, MANJERI.** |

**RESPONDENT'S EXHIBITS:-**

**------------------------------------------** **NIL**

// True copy //

PA to Judge

das

**A.K.JAYASANKARAN NAMBIAR, J.**
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**W.P.(C). No. 26462 of 2015**
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**Dated this the 1st day of September, 2015**

## JUDGMENT

The petitioner was the owner of a residential property, which pursuant to sale transactions eventually came into the hands of the 2nd respondent. The 2nd respondent mortgaged the property with the 1st respondent bank for the purpose of availing a loan, in the repayment of which he subsequently defaulted. Accordingly the respondent bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act' and took steps to obtain possession of the residential property. It is the case of the petitioner that the sale deed in favour of the buyer, from whom the 2nd respondent had obtained the property, was entered into only as a security for a loan that the petitioner had availed from the said person, and it was not intended to transfer any title over the property to the said person. It is also stated that the 2nd respondent has filed a civil suit for evicting the petitioner from the premises and the said suit was decreed ex parte, against which the petitioner has preferred a CM Application before the Sub Court, Tirur, which is now pending. It is under these circumstances that the petitioner has approached this Court, stating to be in possession of the residential premises, and aggrieved by the steps taken by the respondent bank to obtain possession of the premises, in which he is currently residing.

2. I have heard the learned Counsel appearing for the petitioner as also the learned Standing Counsel appearing for the respondent bank.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that inasmuch as the petitioner has transferred the property by a registered sale deed, which transfer was subsequently followed by another sale transaction that conferred a title over the land in the 2nd respondent, and the 2nd respondent had mortgaged the property to the 1st respondent bank in connection with a loan availed from the said bank, the steps now taken by the respondent bank for recovery of the loan amount from the 2nd respondent cannot be said to be illegal. The fact remains however, that the petitioner is in possession of the property in question and it is the stand of the petitioner that he has pursued his legal remedies against the decree of the Court below by which he has been directed to hand over the vacant possession of the property to the

2nd respondent. Under the circumstances, I am of the view that the petitioner can be permitted to retain possession of the property in question subject to the result of the CM Application pending before the Sub Court, Tirur, only on condition that he remits the amounts, that are due to the respondent bank from the 2nd respondent, in equal monthly installments. It would be open to the petitioner to recover the said amounts from the 2nd respondent in appropriate legal proceedings initiated against the said respondent. I therefore, dispose the writ petition with the following directions:-

(i) The total amount outstanding to the 1st respondent bank from the 2nd respondent as on today is Rs.2,47,482/- together with accrued interest. If the petitioner remits the said amount of Rs.2,47,482/- together with accrued interest in 12 equal and successive monthly installments commencing from 15.09.2015, then, further proceedings for recovery of the said amounts by the 1st respondent bank shall be kept in abeyance.

(ii) It is made clear that, if the petitioner commits a default in respect of any of the installments, he will lose the benefit of this judgment and the respondent bank will be free to continue the recovery proceedings against him from the stage at which they presently stand.

I also make it clear that, nothing in this judgment shall be seen as affecting the adjudication of the inter se rights of the petitioner and the 2nd respondent in the CM Application pending before the Sub Court, Tirur.

Sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

das