

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 27004 of 2015 (A)

PETITIONER :

**XL FOODS, 6/19, KIZHAKKUMPATTUKARA, THRISSUR-5
REPRESENTED BY ITS MANAGING PARTNER, SUNITHA SEBI.**

**BY ADVS.SRI.K.B.GANGESH
SMT.SMITHA CHATHANARAMBATH**

RESPONDENTS :

- 1. SOUTH INDIAN BANK LIMITED, REGIONAL OFFICE
AT ERNAKULAM -682031 REPRESENTED BY ITS CHIEF MANAGER
AND AUTHORIZED OFFICER, SRI.K.SASIDHARAN PILLAI.**
- 2. M/S.VARKEYS RETAIL VENTURES (P)LTD.
REGISTERED OFFICE, 32/1174E, CIVIL LINES ROAD,
PALARIVATTOM, KOCHI.**
- 3. DENNIS
S/O.LATE P.V.ITTACHAN, DIRECTOR,
M/S.VARKEYS RETAIL VENTURE (P)LTD. RESIDING
AT HOUSE NO.36/2146
SHENOY ROAD, KALOOR, KOCHI.**
- 4. TOBY ALAPPAT
S/O.LATE P.V.ITTACHAN, DIRECTOR
M/S.VARKEYS RETAIL VENTURE (P)LTD. RESIDING
AT ALAPATT PALATHINGAL
VARKEYS BHAVAN, LOURDPURAM, THRISSUR.**
- 5. SEBI ALAPATT
S/O.LATE P.V. ITTIACHAN, DIRECTOR,
M/S.VARKEYS RETAIL VENTURE (P)LTD. RESIDING,
AT ALAPATT PALATHINGAL
VARKEYS BHAVAN, LOURDPURAM, THRISSUR-5.**
- 6. THRESSIAMMA ITTIACHAN
W/O.LATE P.V.ITTACHAN, ALAPPAT PALATHINGAL HOUSE
VARKEY BHAVAN, LOURDPURAM, THRISSUR-680005.**

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**7. ROSAMMA VARKEY,
W/O.LATE P.I.VARKEY, ALAPPATT PALATHINGAL HOUSE
VII/448/1, ANCHERY P.O., THRISSUR-14.**

**8. ITTY @ RANJU @ VINU VARKEY,
S/O.LATE P.I.VARKEY, ALAPPATT PALATHINGAL HOUSE
VII/448/1, ANCHERY P.O., THRISSUR-14.**

**9. NEETHU
D/O.LATE P.I. VARKEY, ALAPPATT PALATHINGAL HOUSE,
VII/448/1, ANCHERY P.O., THRISSUR-14.**

**10. ANU
D/O.LATE P.I.VARKEY, ALAPPATT PALATHINGAL HOUSE,
VII/448/1, ANCHERY P.O., THRISSUR-14.**

BY SRI.K.S.DILIP

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

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APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF LEASE DEED EXECUTED BY THE PETITIONER AND R5 ON 1/9/1998.

**P2: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WPC
NO. 19921/2015 DT 30/7/2015.**

**P3: COPY OF THE ORDER PASSED BY CHIEF JUDICIAL MAGISTRATE COURT,
THRISSUR IN CMP NO. 1156/2012 DT 31/8/2015.**

**P4: COPY OF CMP NO. 1156/2012 ON THE FILE OF CHIEF JUDICIAL MAGISTRATE
COURT, THRISSUR.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.27004 of 2015

.....
Dated this the 8th day of September, 2015

J U D G M E N T

The petitioner firm is stated to be carrying on business in premises which were taken on lease from the 6th respondent on 01.09.1998. In the writ petition, the petitioner is aggrieved by Ext.P3 order passed by the Chief Judicial Magistrate Court, Trissur, rejecting the claim of tenancy raised by the petitioner under Section 14 of the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act'. The proceedings initiated by the respondent bank against the defaulters of the loan amounts culminated in proceedings taken for obtaining possession of the secured assets under the SARFAESI Act, and this was the context in which the Chief Judicial Magistrate was called upon to decide as to whether the petitioner, who claimed to be a tenant, could obtain the benefit of the judgment of the Supreme Court in **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited (2014 (3) KLT 357)**. The learned Magistrate considered the case of the petitioner and, in Ext.P3 order, entered a specific finding that the

lease agreement that was relied upon by the petitioner was dated 01.09.1998 whereas the documents produced by the respondent bank clearly indicated that the secured asset was mortgaged by the borrowers in favour of the bank on 20.06.1997. It was evident therefore that the tenancy was created subsequent to the mortgage and that the ratio of the judgment in **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited (2014 (3) KLT 357)** would not come to the aid of the petitioner in the instant case. On a consideration of Ext.P3 order and the reasoning contained therein, I am of the view that the said order does not call for any interference in these proceedings under Article 226 of the Constitution of India. Accordingly, I dismiss the writ petition in its challenge against Ext.P3 order.

Counsel for the petitioner would pray for some time to vacate the premises, which is the secured asset as far as the respondent bank is concerned. It is submitted on behalf of the petitioner that, if sometime is granted, then the petitioner will vacate the premises and surrender vacant possession of the premises to the respondent bank. Taking note of the said submission of counsel for the petitioner, I grant the petitioner time up to 30.09.2015 to vacate the premises, making it clear that, on 30.09.2015 the petitioner shall handover the

vacant possession of the premises in question to the respondent bank.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns