IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 28391 of 2014 (Y)

PETITIONERS : -

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1. C.V.SHAJI, AGED 47 YEARS, S/o C.M. VIJAYAN,
   CHULLIYIL HOUSE, ENGANDIYOOR, VADANAPPALLY P.O.,
   VADANAPPALLY AMSOM & DESOM, CHAVAKKAD TALUK,
   THRISSUR DISTRICT.

2. K.K. VARGHESE, AGED 76 YEARS, S/o KOCHHAPU,
   KALOOR HOUSE, VADANAPPALLY P.O.,
   VADANAPPALLY AMSOM & DESOM, CHAVAKKAD TALUK,
   THRISSUR DISTRICT.

3. SELIN VARGHESE, AGED 50 YEARS,
   W/o E.J. VARGHESE, ELAVATHINGAL HOUSE,
   KARIMANGALAM P.O., VADANAPPALLY AMSOM & DESOM,
   CHAVAKKAD TALUK, THRISSUR DISTRICT.

4. P.A. MUHAMMED, AGED 78 YEARS, S/o MOUDU,
   PUTHIYAVEETTIL HOUSE, VADANAPPALLY AMSOM & DESOM,
   CHAVAKKAD TALUK, THRISSUR DISTRICT.

5. P.K. ALI, AGED 50 YEARS, S/o KUNJI MOIDEENKUTTY,
   EDALHULATH PUTHAN PURAYIL HOUSE,
   TRIPRAYAR P.O., NATTIKA, VALAPPAD AMSOM,
   THRISSUR DISTRICT.

6. RAGHAVAN, AGED 67 YEARS,
   KODUVATHUPARAMBIL, VADANAPPALLY AMSOM & DESOM,
   CHAVAKKAD TALUK, THRISSUR DISTRICT.

7. T.A. JOSHY, AGED 62 YEARS, S/o T.J. ANTONY,
   THEKKANATH PANDARAVALAPIL HOUSE,
   KANDASSANKADAVU P.O., KARAMUKKU AMSOM & DESOM,
   CHAVAKKAD TALUK, THRISSUR DISTRICT.

8. M.G. RAISON, AGED 38 YEARS, S/o JOSE,
   MANGAN HOUSE, THAMBIKULAM AMSOM & DESOM,
   VADANAPALLY, CHAVAKKAD TALUK, THRISSUR DISTRICT.

9. T.A. RAJI, S/o ANTHONY,
THEKKANATH PANDARAVALAPIL HOUSE,
KANDASSANKADAVU P.O., KARAMUKKU AMSOM & DESOM,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

10. USMAN S.M., AGED 62 YEARS,
S/o MUHAMMED, SEVANKUZHY HOUSE,
VADANAPPALLY P.O., CHAVAKKAD TALUK, THRISSUR DISTRICT.

11. GOPI MUKUNDHAN, AGED 59 YEARS,
S/o ICHUKUTTIYAMMA, KONGATTIL HOUSE,
THAMPIKULAM AMSOM, VADANAPPALLY P.O.,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

12. SATHYAN, AGED 76 YEARS,
VAZHINADAKKAL HOUSE, VADANAPPALLY P.O.,
GANESHAMANGALAM, CHAVAKKAD TALUK, THRISSUR DISTRICT.

13. C.M. MANIKANDAN, AGED 50 YEARS,
S/o MADHAVAN, VADANAPPALLY P.O.,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

14. MOHASSIN P., AGED 47 YEARS,
S/o ABDUL HAKIM, PANDIKASALA HOUSE,
VALAPPAD P.O., THRISSUR DISTRICT.

15. THOMAS JOHN V., VADAKKETHALA HOUSE,
VADANAPPALLY P.O., CHAVAKKAD TALUK, THRISSUR DISTRICT.

16. A.R. ANTONY, AGED 50 YEARS,
S/o RAPPAYI, ARIMOORU HOUSE, VADANAPPALLY,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

17. P.S. ABDULRASAK, AGED 52 YEARS, S/o SAIDU MUHAMMED,
VADANAPPALLY, CHAVAKKAD TALUK, THRISSUR DISTRICT.

18. KAMARUDHIN P.K., AGED 44 YEARS, S/o KOCHU MUHAMMED,
PANICKAVEETTIL HOUSE, THALIKULAM P.O., VADANAPPALLY,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI. RAJIT

WP(C).No. 28391 of 2014 (Y)

RESPONDENTS : -
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1. M/S.THE FEDERAL BANK LTD, ERNAKULAM BROADWAY BRANCH, COCHIN, REPRESENTED BY ITS AUTHORIZED OFFICER, Mrs. SARASWATHY R.K., CHIEF MANAGER AND AUTHORIZED OFFICER ASSET RECOVERY BRANCH, FEDERAL TOWERS, MARINE DRIVE, COCHIN - 682 031.

2. M/s STAR REFINERIES (P) LTD, INDUSTRIAL ESTATE, BINANIPURAM, EDAYAR,ERNAKULAM DISTRICT - 683 548.

3. M/s STAR AGRO AND WHEAT ROLLER FLOUR MILLS (P) LTD, STAR AGRO NAGAR, TIRUR ROAD, PAZHUR, KUTTIPURAM P.O., MALAPPURAM DISTRICT - 676 101.

4. KHATHOON BEEVI, W/o LATE ABDUL MAJEED HAJI, MUKRIYAKATH HOUSE, VATANAPILLY P.O. THRISSUR DISTRICT - 678 101.

5. KADEEJA BEEVI, D/o LATE ABDUL MAJEED HAJI, MUKRIYAKATH HOUSE, VATANAPILLY P.O., THRISSUR DISTRICT - 678 101.

6. M.A. MUBARAQ, S/o LATE ABDUL MAJEED HAJI, MUKRIYAKATH HOUSE, VATANAPILLY P.O., THRISSUR DISTRICT - 678 101.

7. V.M. NAFEESA, W/o LAGE ABDUL MAJEED HAJI, MUKRIYAKATH REEHA VILLA, MOSQUE ROAD, BYLANE - 1, BEHIND OBRON MALL, PADIVATTOM, ERNAKULAM DISTRICT - 682 025.

8. M.A. MOHAMMED SALIM, S/o LATE ABDUL MAJEED HAJI, MUKRIYAKATH REEHA VILLA, MOSQUE ROAD, BYLANE - 1, BEHIND OBRON MALL, PADIVATTOM, ERNAKULAM DISTRICT - 682 025.

9. M.A. MOHAMMED SHAHINA, S/o LATE ABDUL MAJEED HAJI, MUKRIYAKATH REEHA VILLA, MOSQUE ROAD, BYLANE - 1, BEHIND OBRON MALL, PADIVATTOM, ERNAKULAM DISTRICT - 682 025.

10. HAJIRA BEEVI M.A., D/o LATE ABDUL MAJEED HAJI, MUKRIYAKATH REEHA VILLA, MOSQUE ROAD, BYLANE - 1, BEHIN OBRON MALL, PADIVATTOM, ERNAKULAM DISTRICT - 682 025.

11. HASEENA M.A., D/o LATE ABDUL MAJEED HAJI,
MUKRIYAKATH REEHA VILLA, MOSQUE ROAD,
BYLANE -1, BEHIND OBRON MALL, PADIVATTOM,
ERNAKULAM DISTRICT - 682 025.

R4-R11 BY ADV. SRI.NAGARAJ NARAYANAN
R4-R11 BY ADV. SRI.SAIJO HASSAN
R4-R11 BY ADV. SRI.BENOJ C AUGUSTIN
R4-R11 BY ADV. SRI.PRATHAP PILLAI
R4-R11 BY ADV. SRI.SEBIN THOMAS
R4-R11 BY ADV. SRI.VIVEK V. KANNANKERI
R4-R11 BY ADV. SMT.J.KASTHURI
R4-R11 BY ADV. SRI.VISHNU BHUVANENDRAN
R1 BY ADV. SRI.PETER THARAKAN
R1 BY ADV. SRI.FRANCIS PETER THARAKAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1 : COPY OF THE APPLICATION FILED BY THE 1st RESPONDENT BEFORE THE LEARNED CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR.

EXHIBIT P2(a) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(b) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(c) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(d) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(e) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(f) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(g) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(h) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(i) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(j) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(k) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(l) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

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EXHIBIT P2(o) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(p) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(q) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P2(r) : COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER TO THE PETITIONERS.

EXHIBIT P3(a) : COPY OF THE RECEIPTS SHOWING PAYMENT OF RENT BY THE PETITIONERS TO THE LANDLORD.

EXHIBIT P3(b) : COPY OF THE RECEIPTS SHOWING PAYMENT OF RENT BY THE PETITIONERS TO THE LANDLORD.

EXHIBIT P3(c) : COPY OF THE RECEIPTS SHOWING PAYMENT OF RENT BY THE PETITIONERS TO THE LANDLORD.

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EXHIBIT P3(n) : COPY OF THE RECEIPTS SHOWING PAYMENT OF RENT BY THE PETITIONERS TO THE LANDLORD.

EXHIBIT P3(o) : COPY OF THE RECEIPTS SHOWING PAYMENT OF RENT BY THE PETITIONERS TO THE LANDLORD.

EXHIBIT P4(a) : THE TENANCY AGREEMENT ENTERED INTO BETWEEN THE FATHER OF THE 1st PETITIONER AND THE LANDLORD EVIDENCING THE FACT THAT THE SHOP ROOM WAS TAKEN ON LEASE BY THE FATHER OF THE 1st PETITIONER ON 20.03.1974.

EXHIBIT P4(b) : THE RENT RECEIPT ISSUED BY THE LANDLORD IN FAVOUR OF THE FATHER OF THE 1st PETITIONER DATED 31.01.1992.

EXHIBIT P4(c) : COPY OF THE DEATH CERTIFICATE OF THE FATHER OF THE 1st PETITIONER DATED 11.04.2014.

EXHIBIT P4(d) : COPY OF THE REGISTERED WILL EXECUTED BY THE FATHER OF THE 1st PETITIONER IN FAVOUR OF THE 1st PETITIONER DATED 05.09.2007.

EXHIBIT P5 : COPY OF THE RENT RECEIPT ALONG WITH THE D& O TRADE LICENCE ISSUED BY THE PANCHAYATH TO THE 2nd PETITIONER DATED 01.09.1988

EXHIBIT P6 : COPY OF THE LEASE DEED ENTERED INTO BETWEEN THE 3rd PETITIONER AND THE LANDLORD DATED 13.01.1999.

EXHIBIT P7 : COPY OF THE RENT RECEIPT ISSUED BY THE LANDLORD TO THE 4th PETITIONER DATED 01.05.1982.

EXHIBIT P8 : COPY OF ONE OF THE RECEIPTS DATED 30.09.2001 ISSUED BY THE LANDLORD TO THE 5th PETITIONER.

EXHIBIT P9 : COPY OF THE RENT RECEIPT ISSUED BY THE LANDLORD TO THE 6th PETITIONER DATED 01.01.1982.

EXHIBIT P10 : COPY OF THE RENT RECEIPT ISSUED BY THE LANDLORD TO THE 7th PETITIONER ATED 1.1.1982.

EXHIBIT P11 : COPY OF ONE OF THE RECEIPTS DATED 31.07.2006 ISSUED BY THE LANDLORD TO THE 8th PETITIONER.

EXHIBIT P12 : COPY OF THE RENT RECEIPT ISSUED BY THE LANDLORD TO THE 9th PETITIONER DATED 4.3.77.

EXHIBIT P13 : COPY OF ONE OF THE RECEIPTS NOVEMBER 2006 ISSUED BY THE LANDLORD TO THE 11th PETITIONER.

EXHIBIT P14 : COPY OF THE RENT RECEIPT ISSUED BY THE LANDLORD TO THE 12th PETITIONER DATED 26.7.72.

EXHIBIT P15(a) : COPY OF THE RENT DEED ENTERED INTO BETWEE THE 13th PETITIONER AND THE LANDLORD DATED 30.11.82.

EXHIBIT P15(b) : COPY OF THE RENT RECEIPT DATED 01.09.1988 EVIDENCING THE PAYMENT OF RENT BY THE 13th PETITIONER TO THE LANDLORD.

EXHIBIT P16 : COPY OF THE RENT DEED ENTERED INTO BETWEEN THE 14th PETITIONER AND THE LANDLORD DATED 10.3.88.

EXHIBIT P17 : COPY OF THE LEASE DEED ENTERED INTO BETWEEN THE 15th PETITIONER AND THE LANDLORD DATED 01.8.12.

EXHIBIT P18 : COPY OF THE LEASE DEED ENTERED INTO BETWEEN THE 16th PETITIONER AND THE LANDLORD DATED 3.1.96.

EXHIBIT P19 : COPY OF ONE OF THE RECEIPTS DATED 18.05.2007 ISSUED BY THE LANDLORD TO THE 18th PETITIONER.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 28391 of 2014

Dated this the 31st day of August, 2015

JUDGMENT

The petitioners are the tenants of the property belonging to respondents 4 to 11, whose predecessor-in-title is said to have inducted them as tenants. Since the demised premises had been mortgaged with the first respondent Bank, on default, the Bank has initiated recovery proceedings by taking recourse to the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act , 2002 (the 'Act' for brevity). The grievance of the petitioners is that the respondent bank has initiated proceedings under Section 14 of the Act for taking possession without adding any of the tenants as parties.

2. The learned counsel for the petitioners has submitted that the petitioners have been inducted as tenants

in the various tenements belonging to the respondents 4 to 11. He has further submitted that despite the fact that the petitioners are the tenants in legal possession of the property, the first respondent Bank has not made them parties before the Chief Judicial Magistrate, Thrissur, before whom the first respondent has filed an application under Section 14 of the Act for taking possession of the property.

3. The learned counsel has placed reliance on *Harshad Govardhan Sondagar v. International Assets Reconstruction company Limited and Others*[1] and also the recent judgment of a learned Division Bench of this Court on 20.07.2015 in Writ Appeal No.1466/2015.

4. Summing up his submissions, the learned counsel for the petitioners has submitted that the petitioners, being the legally inducted tenants, are the necessary parties and in their absence the proceedings under Section 14 of the Act cannot be sustained.

5. *Per contra*, the learned counsel for the first respondent Bank has submitted that except the fifteenth petitioner, none of the other petitioners has any registered

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lease. According to him, in the absence of any registered lease, it is impossible for the respondent Bank to ascertain the genuineness of the petitioners' claims that they are the tenants.

6. The learned counsel has also contended that most of the leases in favour of the petitioners are subsequent to the initiation of proceedings by the respondent Bank under Section 13 of the Act. In other words, the landlords have not put the respondent Bank on notice concerning the renewal of the alleged leases. At any rate, the learned counsel has, in my view fairly, submitted that the petitioners are at liberty to approach the learned Chief Judicial Magistrate by filing a suitable application ventilating their grievance as regards their alleged continuation as tenants in the mortgaged property.

7. The learned counsel for the landlords, i.e. Respondents 4 to 11, submits that the petitioners are the tenants and that they have been legally inducted by the predecessor-in-title of the respondents 4 to 11.

8. Heard the learned counsel for the petitioners, the learned counsel for the respondent Bank, and the learned

counsel for the respondent-landlords, apart from perusing the record.

9. Indeed, except the fifteenth petitioner, none of the petitioners has any registered lease. Nevertheless, they have been in possession of the property as can be seen from the abundant material placed by the petitioners before this Court. I hasten to add that the veracity of the material filed is not the subject matter of adjudication undertaken presently.

10. Once it is accepted that the petitioners are the tenants even under unregistered lease deeds, their possession cannot be conclude as illegal, for they could at best be the tenants holding over on the basis of month to month tenancy. Under these circumstances, it is quite essential, especially going by the definitive judicial pronouncements of the Honourable Supreme Court in *Harshad Govardhan Sondagar* (*supra),* that the tenants be put on notice while the creditor Bank initiates recovery proceedings, especially, under Section 14 of the Act for possession.

11. In fact, the learned Division Bench of this Court has very recently, following the judicial dictum in *Harshad Govardhan Sondagar* (*supra),* directed the learned Magistrate to consider the claims of the tenants as regards taking over of possession by the creditor Bank.

12. In the light of the submissions made by the learned counsel for the respondent Bank, I do not think there is any issue to be determined. On the other hand, it suffices if it is observed that the petitioners are at liberty to approach the learned Chief Judicial Magistrate, Thrissur, by filing a suitable application ventilating their grievance concerning the subsistence of their lease *vis-a-vis* the mortgaged property.

13. In the event the petitioners file the necessary application, it is incumbent on the part of the learned Chief Judicial Magistrate to entertain the application thus to be filed and pass appropriate orders thereon, after affording an opportunity of hearing to all parties concerned before proceeding further with the determination of application under Section 14 of the Act. It is abundantly made clear that no observation made in the present disposition shall be

treated as an expression of this Court's opinion on the merits of the matter.

With the above observation, this writ petition stands disposed of. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/–