

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

WP(C).No. 28226 of 2015 (C)

PETITIONER(S):

**R. VIJAYA KUMARAN NAIR, AGED 68 YEARS,
S/O. RAGHAVAN, SAYOOJYAM, T.C 8/1147(2),
MYTHRI NAGAR - C35, VALIYAVILA, THIRUMALA P.O.,
THIRUVANANTHAPURAM-06, (NOW RESIDING AND
WORKING AT AL-RAFAA TRADING AND CONTRACTING
L.L.C., P.B. NO. 2606, RUWI, P.C-112, SULTANATE OF OMAN),
REPRESENTED BY HIS DAUGHTER AND
POWER OF ATTORNEY HOLDER SEEMA. V., AGED 42 YEARS,
D/O. VIJAYA KUMARAN NAIR, JO VILLA,
HIGH SCHOOL ROAD, PARAVOOR, PUNNAPRA NORTH P.O.,
ALAPPUZHA-688 014, KERALA.**

BY ADV. SRI.P.SHANES METHAR.

RESPONDENT(S):

- 1. STATE BANK OF INDIA,
NANTHANCOD BRANCH (S.A.R.B. BRANCH),
THIRUVANANTHAPURAM - 695 123,
REPRESENTED BY CHIEF MANAGER.**
- 2. THE AUTHORISED OFFICER,
STATE BANK OF INDIA
NANTHANCOD BRANCH (S.A.R.B. BRANCH),
THIRUVANANTHAPURAM - 695 123.**
- 3. THE MANAGER (RETAIL OPERATION),
ARMS (A DIVISION OF ASSET
RECONSTRUCTION COMPANY (INDIA) LTD., 715-C ,
7TH FLOOR, SPENCER'S PLAZA PHAZE II, 769,
ANNA SALAI, CHENNAI-600 002, TAMILNADU.**

R1 & R2 BY ADV. SRI.R.S.KALKURA, SC.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT-P1- TRUE COPY OF THE VALUATION REPORT OF LAND AND BUILDING.
- EXHIBIT-P2- TRUE COPY OF THE M.C. 23/2014 ON THE FILE OF THE CJM COURT, THIRUVANANTHAPURAM.
- EXHIBIT-P3- TRUE COPY OF THE ACCOUNT STATEMENT CERTIFICATE.
- EXHIBIT-P4- TRUE COPY OF THE ORDER OF THE CJM COURT, THIRUVANANTHAPURAM.
- EXHIBIT-P5- TRUE COPY OF THE ADVOCATE COMMISSION REPORT.
- EXHIBIT-P6- TRUE COPY OF THE STATEMENT OF ACCOUNTS.
- EXHIBIT-P7- TRUE COPY OF THE LEGAL NOTICE DATED 05/03/2015.

RESPONDENT'S ANNEXURES:-

- ANNEXURE R1A COPY OF THE NOTICE DATED 05/03/2015 ISSUED BY THE COUNSEL FOR THE PETITIONER.
- ANNEXURE R1B COPY OF THE REPLY NOTICE DATED 07/04/2015 ISSUED BY THE RESPONDENTS 1 AND 2.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No. 28226 of 2015

Dated this the 21st day of November 2015

JUDGMENT

The petitioner had approached this Court through the present writ petition, aggrieved by the steps taken by the respondent bank under the SARFAESI Act for recovery of the defaulted loan amounts. It is submitted that the possession of the property has already been taken, pursuant to the order of the Chief Judicial Magistrate. Under the said circumstances, the reliefs sought for in the writ petition, namely, stay of further proceedings pursuant to Ext.P4 order of the Chief Judicial Magistrate, cannot be granted. Counsel for the petitioner would submit that the writ petition can be closed with a direction to the respondent bank to ensure that a notice is issued to the petitioner also before proceeding with the sale of the property. Counsel for the respondent bank would submit that the security interest over the property has been transferred by the bank to the 3rd respondent and further proceedings for the recovery are to be taken by the 3rd respondent. Taking note of the said contention, while closing the writ petition, I make it clear that, before effecting the sale of the property of the petitioner, pursuant to the proceedings under the SARFAESI Act,

the 3rd respondent shall ensure that due notice of the proposed sale is also given to the petitioner. The petitioner shall serve a copy of this judgment to the 3rd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/