

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 31350 of 2015 (P)

PETITIONER(S):

**M/S.FAIR PHARMA,
REPRESENTED BY ITS SOLE PROPRIETOR T.A.MAJEED
HAVING ITS REGISTERED OFFICE AT BROADWAY, ERNAKULAM,
BUILDING NO. 67/7948, COCHIN-31.**

**BY ADVS.SRI.P.PAULCHAN ANTONY
SRI.G.AJITH KUMAR**

RESPONDENT(S):

- 1. M/S.CORPORATION BANK,
REPRESENTED BY ITS AUTHORIZED OFFICER,
ERNAKULAM BRANCH, 1ST FLOOR, RADHAKRISHNAN BUILDING,
CLOTH BAZAR ROAD, ERNAKULAM-682031.**
- 2. DY. ZONAL HEAD,
CORPORATION BANK, ZONAL OFFICE, PUKALAKKAT BUILDING,
THAMMANAM ROAD, PALARIVATTOM, KOCHI-682025.**
- 3. ZONAL HEAD,
CORPORATION BANK, ZONAL OFFICE, PUKALAKKAT BUILDING,
THAMMANAM ROAD, PALARIVATTOM, KOCHI-682025.**

BY ADV. SRI.V.A.AJAI KUMAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF E-SALE NOTICE PUBLISHED IN MATHRUBHUMI DAILY DT 22-2-2015 BY CORPORATION BANK, ERNAKULAM.**
- P2 : COPY OF TERMS AND CONDITIONS OF SALE OF IMMOVABLE/MOVABLE SECURED ASSETS ISSUED BY CORPORATION BANK, ERNAKULAM BRANCH DT 20-2-2015.**
- P3 : COPY OF AUCTION APPLICATION FORM.**
- P4 : COPY OF E-MAIL DT 30-3-2015 SENT BY CORPORATION BANK TO THE PETITIONER INFORMING ACCEPTANCE OF HIS BID**
- P5 : COPY OF THE LETTER NO OR/ERK/630/2015 DT 24-4-2015 ISSUED BY CORPORATION BANK, ERNAKULAM BRANCH.**
- P6 : COPY OF PAYMENT DETAILS TO THE CORPORATION BANK AND LEDGER ACCOUNT OF BANK AUCTION AS PER THE RECORDS OF THE PETITIONER.**
- P7 : COPY OF LETTER OR/ERK/550/2015 DT 17-7-2015 FORM THE RESPONDENT TO THE PETITIONER.**
- P8 : COPY OF THE ADVOCATE NOTICE DT 4-9-2015 ISSUED BY ADVOCATE PAULOCHAN ANTONY P. REQUESTING FOR EARLY RESOLUTION OF THE ISSUE (ALONG WITH COPY OF AD CARD)**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.31350 OF 2015 (P)

Dated this the 1st day of December, 2015

J U D G M E N T

The petitioner is an auction purchaser, who was the successful bidder at an auction held for sale of property that was notified for sale by the 1st respondent bank pursuant to recovery proceedings initiated under the SARFAESI Act against one of its borrowers. Towards the reserve price that was fixed for the property, which was described as 3700 sq. ft built up area bearing door Nos.40/2470, 40/2471, 40/2472 situate in the upper floors of the three storied building in 1.934 cents undivided share in 15.960 cents of land in Sy. No.795/4 and 795/6 of Ernakulam Village together with the right to use the common areas and facilities, the petitioner paid an amount of Rs.1,52,00,000/- towards the bid amount, and also paid an amount of Rs.1,23,500/- towards interest on delayed payment effected to the bank for the auction purchase. The said payments were made between 16.3.2015 and 30.5.2015 in installments. Eventually, when the petitioner approached the respondent bank for issuance of a sale certificate and delivery of property, it was informed by the 1st respondent bank that

the extent of property actually mortgaged with them was only 1033 sq. ft. of built up area along with 1.934 cents of undivided share in 15.960 cents of land in Sy. No.795/4 and 795/6 of Ernakulam Village together with the right to use the common areas and facilities. It was apparent therefore that the extent of built up area that was communicated to the petitioner initially was incorrect, and there was a mutual mistake between the parties with regard to the extent of built up area that was the subject matter of the auction sale. Faced with the said situation, the petitioner approached the respondent bank for a refund of the amounts paid by it towards purchase value of the land by contending that on account of the erroneous representation with regard to built up area, it was not interested in continuing with the sale transaction. It is on account of the inaction on the part of the 1st respondent bank in taking any decision in the matter, that the petitioner has approached this Court through the present writ petition.

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

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that inasmuch as the auction sale proceeded on an erroneous basis with regard to the extent of built up area of the property that was the subject matter of the sale, the sale itself stood vitiated on that ground. What remains to be decided is only the amounts that have to be paid to the petitioner on the principles of restitution for restoring the status quo ante between the parties. The petitioner has paid an amount of Rs.1,53,23,500/- inclusive of an amount of Rs.1,23,500/- by way of interest to the respondent bank. The last of these payments was made on 30.5.2015. Inasmuch as the sale cannot now be proceeded with, I am of the view that the respondent bank would have to refund the amounts collected from the petitioner, together with reasonable interest thereon, for the period from 30.05.2015 till the date of payment. Considering the factual circumstances in the instant case, I am of the view that the interests of justice would be met by directing the respondent bank to refund the amount of Rs.1,53,23,500/-, together with 9% interest thereon, for the period from 30.05.2015 till the date of payment, to the petitioner. The respondent bank shall endeavour to make the payment to the petitioner within a period of

one month from the date of receipt of a copy of this judgment. On the respondent bank making the payment as aforesaid, the sale proceedings in respect of the property shall stand annulled.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/1/12/15