

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 33555 of 2014 (T)

PETITIONER(S) :

**RASIYA, AGED 37 YEARS,
W/O.SADIKALI, KUNNUMMAL HOUSE, KALLANKUNNU,
KALIKAVU.P.O., MALAPPURAM DISTRICT.**

**BY ADVS.SRI.U.K.DEVIDAS
SMT.P.M.SHAHIDA**

RESPONDENT(S) :

- 1. THE AUTHORIZED OFFICER,
THE NILAMBUR CO-OPERATIVE URBAN BANK LTD.,
F 1043, NILAMBUR, MALAPPURAM DISTRICT-679 332.**
- 2. KOLLARAN BIYYATHUTTY, AGED 62 YEARS,
D/O.KUNHALAVI, KOLLARAN HOUSE, KALIKAVU POST,
MALAPPURAM DISTRICT-676 526.**
- 3. EDAKKADAMBAN SADIKALI, AGED 42 YEARS,
S/O.BIYYATHUTTY, KOLLARAN HOUSE, KALIKAVU POST,
MALAPPURAM DISTRICT-676 526**

R1 BY ADV. SRI.DEVAPRASANTH.P.J.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE PETITION ALONG WITH THE REPORT OF
THE PROTECTION OFFICER, DATED 23/08/2012.**
- EXT.P2: TRUE COPY OF THE ORDER DATED 11/09/2013 IN C.M.P.NO. 5207/13 IN
M.C.NO. 19/2013.**
- EXT.P3: TRUE COPY OF THE C.M.P NO.616/2014 DATED 04/02/2014.**
- EXT.P4: TRUE COPY OF THE C.M.P.NO.1913/2014 DATED 05/06/2014.**
- EXT.P5: TRUE COPY OF THE COUNTER STATEMENT IN C.M.P NO.1913/2014
DATED 01/08/2014.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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Dated this the 9th day of March, 2015

JUDGMENT

The petitioner had approached this Court challenging the steps taken by the respondent bank under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', for proceeding against the secured asset, which, in the instant case, was the residence of the petitioner and her children. The facts in the writ petition would disclose that the property in question belongs to the husband of the petitioner, who had availed a loan from the respondent bank by pledging the said property as secured asset for the loan. Pursuant to a strained relationship in the marriage, the husband of the petitioner had moved to other premises for residence, leaving the petitioner and her children to reside in the property in question. When steps were taken by the husband of the petitioner for alienating the property, the petitioner moved the Judicial First Class Magistrate's Court, Manjeri, under the Protection of Women from Domestic Violence Act, 2005 and obtained Ext.P2 order restraining the husband of the petitioner from alienating or otherwise transferring the property to any person, until further orders. It was when the respondent bank

initiated steps for proceeding against the said property, at a time when the order of the Judicial First Class Magistrate, Manjeri was still in force, that the petitioner approached this Court with the present writ petition, seeking a stay of further proceedings initiated by the respondent bank under the SARFAESI Act.

2. I have heard Sri. U.K.Devidas, the learned counsel appearing for the petitioner as also Sri.Devaprasad, the learned Standing Counsel appearing for the respondents.

The learned counsel for the respondent bank would submit, on instructions, that the respondent bank does not intend to proceed further under the SARFAESI Act, against the residential property, in which the petitioner and her children are residing. It is submitted that the respondent bank will only proceed against the remaining part of the property, excluding the residential house, where the petitioner and her children are residing. Counsel for the petitioner submits that, if the said undertaking by the respondent bank is recorded, then the petitioner will have no further subsisting grievance as against steps taken by the respondent bank under the SARFAESI Act. Accordingly, recording the submission on behalf of the respondent bank that,

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pursuant to the proceedings initiated by them under the SARFAESI Act, they will not proceed against the residential house where the petitioner and her children are residing, the writ petition is disposed.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das