

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

WP(C).No. 35110 of 2014 (K)

PETITIONER :-

**JOHN ZACHARIA, AGED 48 YEARS,
S/O.LATE M.K.JOHN, MARIKUDIYIL HOUSE,
PAZHANGANADU KARA, KIZHAKAMBALAM P.O.,
KIZHAKAMBALAM VILLAGE, ERNAKULAM DISTRICT - 683 562.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS :-

- 1. THE FEDERAL BANK LTD.,
REPRESENTED BY ITS MANAGER,
ALUVA BRANCH, ERNAKULAM, PIN - 682 030.**
- 2. J.M.FINANCIAL ASSET RE CONSTRUCTION COMPANY (P) LTD.,
REGD. OFFICE 7TH FLOOR, APPASAHEB, MARATHE MARG,
PRABHADEVI, MUMBAI - 400 025.**

**R1 BY SRI.GOPAKUMAR G., SC
R1 BY ADVS. SRI.REJI GEORGE
SRI.BINOY DAVIS
R2 BY ADVS. SRI.SAJI VARGHESE
SMT.MARIAM MATHAI**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 35110 of 2014 (K)

APPENDIX

PETITIONER(S)' EXHIBITS :-

**EXHIBIT P1 :- A TRUE COPY OF THE O.A.NO. 376 OF 2013 ON THE FILE OF THE
DRT, ERNAKULAM DATED 07/06/2013.**

**EXHIBIT P2 :- A TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER
AND OTHERS WITH THE COUNTER CLAIM BEFORE THE DRT,
ERNAKULAM IN EXT.P1 DATED 19/12/2014.**

**EXHIBIT P3 :- A TRUE COPY OF THE COMMUNICATION OF THE SECOND
RESPONDENT DATED 20/11/2014.**

RESPONDENT(S)' EXHIBITS :- NIL

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//TRUE COPY//

P.A TO JUDGE

A.MUHAMED MUSTAQUE, J

W.P.(C)No.35110 of 2014

Dated this the 17th day of June, 2015

JUDGMENT

The petitioner is a borrower from the Federal Bank approached this Court challenging Ext.P3 notice, issued by a Asset Reconstruction Company also questioning the locus standi of the company to prosecute the OA No.376/2013 instituted before the DRT on the ground that the company is not a notified institution in terms of the Recovery of Debts Due to Banks and Financial Institution Act, 1993.

2. The petitioner is the borrower of the Federal Bank. The Federal Bank transferred the assets and liabilities to Asset Reconstruction Company, the 2nd respondent.

3. The petitioner apprehends that based on Ext.P3 the second respondent will invoke SARFAESI proceedings and submits that they have no right to proceed under SARFAESI Act.

4. As seen from the Ext.P3 itself it is not a notice issued under the SARFAESI proceedings Act. If at all any proceedings being initiated under SARFAESI proceedings Act, the petitioner is at liberty

to challenge the same at the appropriate time.

5. Regarding to the petitioner's challenge to the maintainability of OA No.376/2013 instituted by the second respondent before the DRT, I am of the view that the petitioner shall raise the objection regarding the maintainability before the DRT. The DRT shall proceed with the matter only after deciding the question of maintainability of OA No.376/2013 filed by the second respondent.

This Writ Petition is disposed of.

Sd/-

**A.MUHAMED MUSTAQUE
JUDGE**

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//TRUE COPY//

P.A. TO JUDGE